

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 SHIRLEY BROWN,)
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) Case No. 1:11-CV-1370
) Judge Lesley Wells

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THE VIDEOTAPED DEPOSITION OF OFFICER MICHAEL CHAPMAN
TUESDAY, JUNE 12, 2012

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The videotaped deposition of OFFICER MICHAEL

CHAPMAN, a Defendant herein, called for examination by
the Plaintiff, under the Federal Rules of Civil
Procedure, taken before me, Lori A. Morris, a Notary
Public within and for the State of Ohio, pursuant to
Notice, at Cleveland City Hall, 601 Lakeside Avenue,
Cleveland, Ohio commencing at 9:00 a.m., the day and
date above set forth.

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16
17 ALSO PRESENT:

18 Videographer
Shirley Brown
Maurice Brown
19 Leslie Hogan
Belal Ilain

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19 OBJECTIONS BY

20	MR. KAISER	30, 34, 37(3), 38(2), 41, 44, 49,
21		55, 56, 63(2), 65(3), 66, 72, 79, 87, 96(2),
22		97(2), 98, 121, 122, 123(2), 124(3), 128, 129
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1 OFFICER MICHAEL CHAPMAN
2 a Defendant herein, called for examination by the
3 Plaintiff, under the Rules, having been first duly
4 sworn, as hereinafter certified, deposed and said as
5 follows:

CROSS-EXAMINATION

7 BY MR. GERHARDSTEIN:

8 Q. Good morning.

9 A. Good morning.

10 Q. State your name, please.

11 A. Michael Chapman.

12 Q. Where do you work?

13 A. Cleveland Police, Fourth District.

14 Q. My name's Al Gerhardstein. With me is David

15 Malik and members of the family of Rodney Brown.

16 And we're here to take a deposition in a
17 lawsuit. You're familiar with this case; right?

18 A. Yes.

19 Q. Have you been deposed before?

20 A. No.

21 Q. Have you been sued before?

22 A. Yes.

23 Q. What was the lawsuit?

24 A. I got into an accident, probably around 2000, and
25 I didn't have insurance and the insurance company

1 that the female had, they sued me.

2 Q. Okay. Did you give a deposition in that case?

3 A. No.

4 Q. Have you ever discharged a firearm at a suspect?

5 A. No.

6 Q. Have you ever tased a suspect, other than Mr.
7 Brown?

8 A. No.

9 Q. Have you ever been tased?

10 A. Yes.

11 Q. When were you tased?

12 A. I'm not sure of the date and time, but it's been
13 on my -- since I've been on the police force.

14 Q. And tell me about that.

15 What were the circumstances?

16 A. Well, what do you mean as far as?

17 Q. How you came to be tased?

18 A. Oh, we had training. We have training once a
19 year and part of the training was taser training.
20 During the taser training they asked if there are
21 any volunteers that want to get tased, and I
22 raised my hand.

23 And they -- me and my -- one of my classmates
24 they put a prong on me and prong on him and we
25 held our hands and they turned the taser on and

1 it pretty much shocked the heck out of us.

2 Q. Did that hurt?

3 A. Yes.

4 Q. Were your muscles impacted by that?

5 A. Yes.

6 Q. What happened?

7 A. I couldn't move. My muscles were just really
8 tense, like, you know, all of my muscles felt
9 like they were balled up into a fist.

10 Q. Did you fall down?

11 A. I was already laying down.

12 Q. And these prongs were actually alligator clips?

13 A. Yes.

14 Q. So they didn't actually stick it into your skin?

15 A. No, they just clipped it on, like, you know,
16 clamped it on my skin.

17 Q. And a single discharge was able to incapacitate
18 the muscles in both you and your partner?

19 A. Yes.

20 Q. How many times have you volunteered for that?

21 A. Just once.

22 Q. Would you do it again?

23 A. No.

24 Q. Why not?

25 A. Because it was probably the most painful thing

1 I've ever felt in my life.

2 Q. On December 31st, 2010 did you have an
3 identifying number or code that you went by? A
4 badge number or cruiser number?

5 A. Yes.

6 Q. What was that?

7 A. 4 Barney 24.

8 Q. 4 Barney 24?

9 A. Yes.

10 Q. And is that an identifier you carry every day,
11 the same one?

12 A. When I was with that number, yes.

13 Q. Well, is that a geographical area, like a beat,
14 or was that your number that you carried every
15 day on the police department?

16 A. No, it's actually a geographical area.

17 Q. So if you're working as a detective, you wouldn't
18 carry that?

19 A. No.

20 Q. So one day you might be 4B24 and another day
21 someone else could be 4B24?

22 A. Yes.

23 Q. But on December 31st, 2010 you were 4B24?

24 A. Yes.

25 Q. And did you have a partner?

1 A. Yes.

2 Q. Who was that?

3 A. Officer Belal Ilain.

4 Q. What shift did you work?

5 A. Second shift.

6 Q. Were you in a zone car?

7 A. Yes.

8 Q. Were you the driver or the rider?

9 A. I was the driver.

10 Q. What equipment did you have on your person that
11 night?

12 A. I remember I had my taser. My OC spray.

13 Flashlight. My duty weapon. Handcuffs. Two
14 pairs of handcuffs. I think I had -- I'm not
15 sure if I had my ASP baton.

16 I think I had my ASP baton.

17 Q. And all of those you carry on your duty belt?

18 A. No. My OC spray, my -- actually, my flashlight
19 and my taser all on my vest cover. Everything
20 else was on my belt.

21 Q. And the taser is an X26?

22 A. Yes.

23 Q. Your duty weapon is a Glock?

24 A. Yes.

25 Q. Tell me about the communications equipment that

1 was available to you on December 31st, 2010.

2 A. Do you mean my radio?

3 Q. Yes.

4 A. Well, we had the car radio and also our hand-held
5 radios.

6 Q. Now, with respect to the car radio, is that on a
7 taped line?

8 A. Yes.

9 Q. Is the hand-held radio over a different frequency
10 than the car radio?

11 A. No, it's all the same frequency.

12 Q. So it's all on a taped line?

13 A. Yes.

14 Q. What frequency?

15 A. Well, I don't know the frequency.

16 Q. When you use the hand-held or car radio, can you
17 speak to other zone cars directly?

18 A. Yes.

19 Q. And all of that is taped?

20 A. Yes.

21 Q. Did you also carry a cell phone?

22 A. On that day, I'm not sure.

23 Q. Do you normally have a personal cell phone?

24 A. Yes.

25 Q. Does the department ever issue cell phones?

1 Is there a Cleveland Police Department cell
2 phone?

3 A. I don't know.

4 Q. Have you ever had one?

5 A. No.

6 Q. Are there any rules about when you can make a
7 cell phone call?

8 A. I'm not sure.

9 Q. You're not aware of any?

10 A. I'm not sure.

11 Q. On December 31st, 2010 did you make any cell
12 phone calls while you were on your shift?

13 A. I'm not sure. I can't remember.

14 Q. What was the service that you used for your cell
15 phone in December of 2010?

16 A. Verizon.

17 Q. Do you still have the same service?

18 A. Yes.

19 Q. What was your cell phone number?

20 A. 216-337-6486.

21 Q. Do you still have the same number?

22 A. Yes.

23 Q. In the zone car was there a cruiser cam?

24 A. No.

25 Q. When you were working that night, did you carry a

1 tape recorder?

2 A. No.

3 Q. Do you ever carry a tape recorder?

4 A. No.

5 Q. At anytime during your interaction with Rodney
6 Brown on 12-31-2010, did you make any cell phone
7 calls?

8 MR. KAISER: Asked and
9 answered, but you can go ahead and answer
10 it again.

11 A. No.

12 Q. Your X26 taser, did it have a video feature?

13 A. No.

14 Q. When you came on shift on December 31, 2010, did
15 you do anything to investigate whether the taser
16 was in working order?

17 A. I don't remember.

18 Q. Is there a routine that you follow with respect
19 to the taser?

20 A. Normally I might do a five-second check on the
21 taser when I come in, just to make sure it's in
22 working order.

23 Q. Is it a five-second check or a one-second check?

24 A. Normally a five-second check. Sometimes a
25 one-second check.

1 Q. Is it a spark test?

2 A. Yes.

3 Q. If you had done a spark test on December 31st,
4 2010, it would show up on the dataport; right?

5 A. Yes, it would.

6 Q. Have you ever looked at your taser download from
7 that night?

8 A. I can't -- I think I glanced at it. I'm not
9 sure, though.

10 Q. Did you spark test your taser on December 31st,
11 2010 at the beginning of your shift?

12 A. I can't remember.

13 Q. Would it surprise you if you hadn't?

14 A. No.

15 Q. What's the purpose of a spark test?

16 A. Just to make sure that the taser is working.

17 Q. And do you know whether there were -- did you
18 carry the same taser every night?

19 A. Yes.

20 Q. So if you regularly spark tested your taser, the
21 spark test would show up on the download for each
22 night on the days when you worked previous
23 shifts; right?

24 A. I'm really not sure how it all works, but I'm
25 pretty sure.

1 Q. What was your first contact with Rodney Brown?

2 A. Is when I approached him after -- during a
3 traffic stop and asked him for his driver's
4 license and insurance.

5 Q. Well, back up and tell me why you stopped him.

6 A. Well, we had an assignment in the area of Regalia
7 -- I can't remember the exact street. After we
8 were done with the assignment as we were going
9 back to our vehicle, we heard gunshots in the
10 area, so we decided to wait on Regalia to see if
11 anything that might come in our direction. And a
12 vehicle comes westbound towards us and doesn't
13 have his lights on -- from the area where the
14 gunshots were fired.

15 We figured we could check this vehicle out,
16 see what's going on with it, make sure the male
17 or female who was driving checked okay.

18 Q. So what did you do?

19 A. Well, the vehicle turned south on East 113th. We
20 stopped -- we turned our lights and sirens,
21 initiated a traffic stop at East 113th and
22 Benham. I got out the car -- my partner and I
23 exited the vehicle and I went to Mr. Brown and I
24 asked him for his license and insurance.

25 Q. When you approached Mr. Brown, did you know who

1 he was?

2 A. No, I didn't.

3 Q. So what happened next?

4 A. He stated to me, do you know who I am? And I
5 said, no, I need to see your license and
6 insurance. He stated, again, do you know who I
7 am? And I said, no. I said, you know, give me
8 your license.

9 And he reached towards the passenger side
10 area, I think, the glove compartment area and
11 started having words with my partner. And my
12 partner told me, he said, Mike, he needs to come
13 out the car.

14 Q. Then what happened?

15 A. Well, I told Mr. Brown, I said, Mr. Brown -- I
16 said, sir, I need you to exit the vehicle. He
17 exited the vehicle quite aggressively and I
18 stepped back towards the back of the vehicle and
19 I said, sir, you just come back here, place your
20 hands on the hood or on the trunk.

21 And, you know, me and my partner, we went to
22 him, I was on the left side, my partner was on
23 the right side. I started to pat him down and we
24 let him know that -- as we were grabbing hold of
25 him, letting him know that, sir, you know, you

1 need to -- or, sir, you're under arrest. You
2 haven't showed us any ID, you know, and you're
3 refusing to give us any ID, you're under arrest.

4 And he's tensing up and as soon as we start to
5 try to put his arms behind his back, he just
6 throws me and my partner off of him. And -- keep
7 going?

8 Q. Yes.

9 A. All right. Right as soon as he throws us both
10 off of him, you know, I take a step back and
11 pulled my taser and I pointed it at him and said,
12 sir, get on the ground and he takes a step
13 towards me. I'm like, sir, get on the ground,
14 and he takes another step towards me and I taser
15 him right in the chest area. Has absolutely no
16 affect on him.

17 He starts running eastbound on Benham. My
18 partner -- as he's running, my partner tries to
19 tase him in the back. And the taser hits, but
20 had absolutely no affect.

21 So we're chasing him and I could see that no
22 longer his arms aren't swinging anymore and I
23 said, Belal, he's reaching for something, he's
24 reaching for something. So we're chasing him, we
25 get to East 114th and we're running south on East

1 114th, running about 10 houses -- about 10
2 houses, maybe 8 to 10 houses, my partner catches
3 him in the driveway and they go rolling from the
4 driveway into the grass.

5 As soon as we stop, I ended in the fray. And
6 we're trying now to drive stun him. To place
7 him, you know, get -- try to get some control of
8 him. Well, he's smacking our tasers away with
9 his bare hands and it's doing absolutely nothing.
10 And my partner throws his taser out, I
11 reholstered my taser and we're wrestling with
12 him, he's punching and kicking at us. Now it's
13 kind of -- it's almost like an all out brawl now.

14 He's punching and kicking, we're grabbing,
15 everybody is rolling around trying to get control
16 over him and he's a very powerful man. You know,
17 it was most of the time we were just trying to
18 put all our weight on him just to keep him down.

19 During the fight I'm trying to radio our
20 location, what's going on, we need help. We're
21 going back and forth with him. He grabbed my
22 arm, he twisted my wrist back. You know, he hit
23 my partner in the head with an object. And
24 during the fight, I see him produce a black
25 object in his hand, wasn't sure what it was

1 because it was dark.

2 At this point, you know, we've been fighting
3 with him for some time. I'm getting quite
4 exhausted. I see a black object produced in his
5 hand and I grabbed my gun and I jammed it in his
6 back. And I yell to clear my partner out, hey,
7 I'm gonna shoot him. And it was more so, too, so
8 Mr. Brown could hear me because, hey, this is a
9 clear indicator, I have my gun out and he's still
10 fighting my partner. Grabs his hand and yanks
11 the object out and throws it and says, don't
12 shoot and I reholster. Now we're back again
13 fighting with him. Everybody's fighting.
14 Everybody's fighting. We're not getting anywhere
15 with him.

16 During the fight we kind of all three of us
17 come to a standstill or a -- you know, nobody's
18 moving, everybody's breathing hard. We're just
19 keeping our weight on him just so he can't get
20 up. Most we can get him is down to one knee. We
21 never really got him down to his stomach or all
22 fours at anytime, but we keep him down on one
23 knee at least.

24 At one point he yells, hey, go get my people.
25 And we look and it's like a crowd of people

1 coming towards us. And he's like just yelling,
2 hey, go get my people, go get my people. And I'm
3 trying to broadcast to radio, you know, hey, we
4 think we got some people coming towards us. Not
5 really sure, but it was really hard to broadcast.
6 I'm trying to breathe and talk at the same time.
7 I think that when the people came and they saw
8 that it was two cops fighting -- I think that he
9 may have knew them, but when they started seeing
10 maybe two cops fighting, they backed off.

11 And, you know, so we're kind of still holding,
12 everybody's holding each other. He's holding us,
13 we're holding him.

14 And the first car arrives -- well, the first
15 car shows actually shows up and goes the wrong
16 way. I'm screaming for him to turn around and
17 come back to us.

18 The first car comes and Officer Vargas shows
19 up. He's pointing his taser and he's telling us
20 to leave and my partner's yelling, no, the
21 taser's not working, the taser's not working, so
22 he tries to grab him. And the other officers all
23 show up, everybody else shows up and they piled
24 on him.

25 My partner and I, we fall back because we're

1 exhausted, you know. There is no more fight left
2 in us. I can barely crawl, you know. And as I'm
3 laying on the ground, he's still fighting with
4 the other officers, you know.

5 I'm trying to -- as far as I can remember,
6 eventually they get him under control and I
7 remember broadcasting to radio to maybe get
8 another vehicle on East 113th where Mr. Brown --
9 you know, secure the vehicle, make sure nobody
10 takes off with it or just to secure the vehicle.

11 And I guess during this time they had placed
12 Mr. Brown in the back of one of the zone cars.
13 When I come back from making sure the vehicle was
14 secure, one officer comes to me and he says, hey
15 -- well, EMS shows up eventually -- let me
16 digress.

17 I see somebody -- one officer is talking to
18 Mr. Brown and they grab him out the vehicle and
19 EMS shows up. They put him in the ambulance and
20 a short time later an officer -- one of the
21 officers comes to me and says, hey, he's in
22 cardiac arrest.

23 And after that, you know, they were in there
24 -- I went to the vehicle, I went to ambulance, I
25 could see them doing, you know, chest

1 compressions, you know, trying to resuscitate
2 him.

3 Q. At anytime while you were rolling around with Mr.
4 Brown, did he say he couldn't breathe?

5 A. No.

6 Q. At anytime when you were having contact with Mr.
7 Brown, did he say he couldn't breathe?

8 A. No.

9 Q. When you were with Mr. Brown, was Officer
10 Melendez there?

11 A. At what point when I was with Mr. Brown?

12 Q. Were you still with Mr. Brown when Officer
13 Melendez showed up?

14 A. When he first showed up on scene, when -- he was
15 the second assisting -- after -- he showed up
16 after Officer Vargas did, he was his partner. So
17 they both showed up right on the scene. They
18 were the first two officers to assist us.

19 Q. So while you were still having contact with Mr.
20 Brown, Officer Melendez was having contact with
21 Mr. Brown?

22 A. Yes.

23 Q. And during that time, did Mr. Brown say, I can't
24 breathe?

25 A. No.

1 Q. Did Officer Melendez say, who gives a fuck?

2 A. No.

3 Q. Did you ever hear him say that?

4 A. No.

5 Q. Have you ever heard that he said that?

6 A. No -- well --

7 Q. Did you see that in the complaint?

8 A. -- I'm sorry, I heard eventually on the tape he
9 did say it.

10 Q. So you listened to the tape?

11 A. Yes.

12 Q. And you heard him say that?

13 A. Yes.

14 Q. And you heard Mr. Brown say, I can't breathe?

15 A. Yes.

16 MR. KAISER: While
17 listening to the tape?

18 BY MR. GERHARDSTEIN:

19 Q. While you were listening to the tape?

20 A. Yes.

21 Q. So when was that?

22 A. I don't know when he actually said that.

23 Q. Was it before you were lying on the ground
24 exhausted?

25 A. No, it had to be after the fact, after -- he said

1 that it was after me and my partner had
2 disengaged from the fight.

3 Q. And how do you know that?

4 A. Because there was no talking when we actually
5 were fighting with him until, you know, only when
6 we told him that tasers weren't working.

7 I mean, as far as talking, nothing short of
8 put your hands behind your back, you know, but
9 nothing as far as I can't breathe.

10 Q. Is there anything else that you recall about the
11 incident?

12 A. No.

13 Q. When you first contacted Mr. Brown while you were
14 at the side of his vehicle, did you tell him to
15 turn his headlights on?

16 A. No, I didn't.

17 Q. Why didn't you just tell him to turn his
18 headlights on and let him move on?

19 A. Well, the reason when I stopped him -- when I do
20 a traffic stop, that's the first thing I ask is,
21 sir, do you have license and insurance.

22 Q. You learned at some point that he had plenty of
23 ID; right?

24 A. I can't remember.

25 Q. He had a birth certificate, he had other ID on

1 him; right?

2 A. I can't remember.

3 Q. When you brought Mr. Brown back to the back of
4 the vehicle, did there come a time when you used
5 force to direct Mr. Brown to put his hands on the
6 vehicle?

7 A. No.

8 Q. Did you ever elbow him in the neck?

9 A. No.

10 O. Did you ever push him onto the vehicle?

11 A. No.

12 Q. Would it be appropriate to elbow a person in Mr.
13 Brown's situation in the neck in order to get him
14 to place his hands on the vehicle?

15 A. No.

16 Q. In a situation where all you've got is a person
17 who hasn't produced his ID and you're still
18 investigating, would it be appropriate to push
19 him onto the vehicle in order to get him lined up
20 so you can pat him?

21 A. No.

22 Q. He stopped when you put your lights and siren on;
23 right?

24 A. Yes.

25 Q. Did anyone ask him to place his car into park?

1 A. Yes, I think my partner told him place the car
2 into park.

3 Q. And he complied with that; right?

4 A. Yes.

5 Q. And when he was asked to exit his vehicle, he
6 complied with that; right?

7 A. Yes.

8 Q. At some point while you were -- by the way, why
9 did you decide to start cuffing him?

10 A. Well, he was -- he was being very evasive, we
11 felt, with not giving us any identification. His
12 speech was quite slurred and he kept saying, do
13 you know who I am? Instead of giving us
14 identification he just -- it's not normal when an
15 officer asks you for identification and the
16 person keeps answers, do you know who I am? You
17 know, it seemed like he was being pretty evasive.

18 So, okay, it was the whole situation, the
19 totality of the situation. I mean, he came from
20 an area with gunshots, refused to show us any ID,
21 had slurred speech, so it was the totality of
22 everything.

23 Q. What was the crime you were arresting him for?

24 A. Well, at the time he wasn't producing any
25 identification, which is an unwaivable offense,

1 which is also an arrestable offense. So that
2 alone, we had probable cause to arrest him, just
3 for refusing to show us any type of
4 identification. Or at the time, we couldn't find
5 any identification on him. So that alone, and
6 him being very -- like I said, being very
7 evasive, seems like he was under the influence of
8 something, having slurred speech.

9 Q. While you were interacting with Mr. Brown, was
10 that contact with Mr. Brown being broadcast?

11 A. I'm not understanding.

12 Q. Would that be on your radio?

13 A. No.

14 Q. You could put it on the radio, though; right?

15 All you'd have to do is click you mic?

16 A. You'd have to hold it, which isn't practical.

17 You'd have to hold your mic, you can't just --

18 Q. You can't set it?

19 A. Yeah, you just can't click it and leave it on.

20 Q. Is that the only way to have an interaction with
21 a citizen recorded, you have to hold the mic
22 down?

23 A. Unless you were to buy your own instrument.

24 Q. You said that you didn't find any ID on Mr.
25 Brown, did you pat him down?

1 A. Yes, we patted him down just for -- at the time
2 for weapons.

3 Q. And did you reach into his pockets to find wallet
4 or ID?

5 A. No.

6 Q. So when you say you didn't find any ID on him,
7 what did you do to look for ID?

8 A. Well, we didn't really have the chance, because
9 we didn't -- we didn't have a chance to search
10 him. We wanted to place him under arrest and
11 that's when we could search him. We could only
12 pat him down for weapons at the time.

13 Q. How much time did you give him in the vehicle to
14 come up with his ID before you directed him to
15 leave the car?

16 A. I can't give you the amount of minutes, but it
17 was plenty of time. I asked him three times for
18 his ID. My partner asked for his ID. He was
19 going back and forth with his partner and refused
20 to give any identification to either one of us.

21 Q. More than a minute?

22 A. Yes.

23 Q. More than five minutes?

24 A. I probably say about five minutes.

25 Q. Prior to initiating the traffic stop, did you

1 observe his license plates?

2 A. No.

3 Q. Did you -- you have a system where you can type
4 in a license plate and get an owner and all that
5 kind of stuff, right, all that information?

6 A. Yes.

7 Q. Did anybody do that?

8 A. I think my partner may have, but I can't
9 remember.

10 Q. So prior to stopping him, did you get a report
11 back with respect to the owner of the car or
12 anything about the car?

13 A. I can't remember. Sometimes we're able to type
14 in the plate and call it out. Sometimes we can
15 just -- sometimes we'll type in a plate and then
16 call out a traffic stop. Sometimes we can just
17 call out the plate over the radio and just exit
18 the vehicle before we get a report on the
19 vehicle.

20 Q. Before the events of that evening had concluded,
21 had you ever received a report back as to the
22 owner of the car?

23 A. I can't remember.

24 Q. Did you learn, before the events of the evening
25 are concluded, that the owner of the car lived

1 within a couple blocks of the location you were
2 at at the time?

3 A. Yes.

4 Q. Tell me about that. When did you learn that?

5 A. I can't remember when I learned it, but I do
6 remember learning it. I don't know if I checked
7 the -- went back and checked the plate or check
8 his ID, but I remember seeing it, that the
9 vehicle came, like, down the street from where it
10 was supposed to be.

11 Q. You learned it that night?

12 A. I would -- I don't remember.

13 Q. Well, if you learned it that night, did you take
14 any steps to contact the owner of the car who was
15 just a few blocks away?

16 A. No.

17 Q. Why not?

18 A. Well, if I learned it, it was after everything
19 had concluded. And at this point, homicide takes
20 the investigation. I have absolutely nothing
21 else to do with anything. My partner and I have
22 absolutely nothing else to do with anything.

23 Q. So is it your testimony now that you did not
24 learn that the owner of the car lived a few
25 blocks away prior to having the events with Mr.

1 Brown?

2 A. I can't remember.

3 Q. Okay. Well, let me just understand your normal
4 practice; okay?

5 A. M-hm.

6 Q. So you don't really remember when you learned
7 that the owner of the car was nearby. If you had
8 learned that the owner of the car was nearby and
9 you had just had this altercation with the driver
10 of the car, would you have taken steps to contact
11 the owner just to advise her as to the status of
12 the car and what had happened?

13 A. I never had a homicide situation, so I couldn't
14 really tell you. This is the only one I've ever
15 had is this.

16 Q. And if he had not died, would you have contacted
17 the owner of the car?

18 A. Yes, we would have tried to contact the owner.

19 Q. So you would expect a homicide situation is even
20 more serious than the ones you've had; right?

21 A. Yes.

22 Q. So you would expect that someone involved in the
23 homicide investigation that night would have
24 contacted the owner of the car; right?

25 A. Well, I don't know the procedures of homicide. I

1 don't know their procedures.

2 Q. I understand that you don't know them, but as a
3 law enforcement professional you would expect
4 someone to contact her; right?

5 MR. KAISER: Objection.

6 A. I don't know.

7 Q. You're at the back of the car and you said that
8 you told him he was under arrest; is that
9 correct?

10 A. Yes.

11 Q. And you're on Mr. Brown's left side?

12 A. Yes.

13 Q. And your partner is on Mr. Brown's right side?

14 A. Yes.

15 Q. And at that point, are you situated squarely in
16 the back of Mr. Brown's vehicle?

17 A. No, we're on the -- we're -- I think we're kind
18 of like on the corner. Like he's near the corner
19 of the car. I'm on the left side of the car,
20 he's pretty much on the corner near the rear left
21 side of the car.

22 Q. I'm going to give you a piece of paper and I'd
23 like you to just draw a box for the car and put a
24 C for your initial where you are and B for Mr.
25 Brown's initial for where he is and an I for an

1 initial showing where your partner is.

2 And the driver's side of the car would be --
3 so you're on the driver's side of the car?

4 A. Yes.

5 Q. And what kind of car is that?

6 A. I can't remember what type of car it is.

7 Q. Is it a sedan or a station wagon?

8 A. It was a four door smaller vehicle.

9 Q. So you're all lined up at the driver's rear of
10 the car --

11 A. Yes.

12 Q. -- right?

13 And then you said that Mr. Brown -- well,
14 prior to Mr. Brown taking any action, did his
15 hands ever get placed on the car?

16 A. Yes.

17 Q. And did you ever get a cuff on one of the arms?

18 A. No.

19 Q. And did your partner ever get a cuff on one of
20 the arms?

21 A. No.

22 Q. Did you ever have your hands on Mr. Brown's left
23 arm?

24 A. Yes.

25 Q. And did you bring his left arm around to his

1 back?

2 A. I wasn't able to.

3 Q. Was that your intention?

4 A. Yes.

5 Q. And as you had your hands on his left arm, what
6 happened?

7 A. Well, as we were letting him know he's under
8 arrest, I tried grabbing his hands to place it
9 around him, but he tensed up very strong. My
10 partner tried to grab his arm, you know, now
11 we're trying to put his arms behind his back but
12 he's, you know -- and he just kind of swung us
13 off of him. You know, kind of yanked away from
14 me, pushed me away and pushed my partner away.

15 Q. Okay. And then did Mr. Brown move at that point?

16 A. Yes.

17 Q. Where did he go?

18 A. Well, I took a step back and he took a step
19 towards me and he had his fist in the air. Like
20 I said I took a step back and he took another
21 step towards me.

22 Q. When you say you took a step back, did you take a
23 step into the street or behind the vehicle?

24 A. No, we were already in the street so I was taking
25 a step back maybe towards the front of the

1 vehicle because we were at the back of the
2 vehicle.

3 Q. Were you facing Mr. Brown?

4 A. Yes.

5 Q. And Where was your partner?

6 A. He was -- I can't remember where my partner was
7 at the time. I remember where I was.

8 Q. So how far away from Mr. Brown were you when you
9 took your step back?

10 A. I would say if he was at the rear of the vehicle,
11 I was maybe at the middle of the vehicle, not --
12 I mean, maybe --

13 Q. Six feet?

14 A. Around that.

15 Q. And then at that point you carry your taser in
16 some sort of shoulder holster?

17 A. No, a chest holster. A body holster.

18 Q. And does your taser have a yellow handle or a
19 yellow edge of the handle?

20 A. No.

21 Q. Is it all black?

22 A. Yes, yes, it is. It's all black.

23 Q. You've stepped now toward the driver's seat;
24 right?

25 A. Yes.

1 Q. And Mr. Brown has stepped towards you, you say?

2 A. M-hm.

3 Q. Then what happened?

4 A. Well, I pull my taser and I aim it at him. I
5 said, get on the ground, sir. Sir, get on the
6 ground.

7 Q. And when you said that, did you have any light
8 beam or any other indication that the taser was
9 activated?

10 A. Yes.

11 Q. Tell me about that.

12 A. It was a red light beam that was directly on his
13 chest.

14 Q. And when you acted in this manner, were you
15 acting consistent with the general orders on use
16 of force from the City of Cleveland?

17 A. Yes.

18 MR. KAISER: Objection
19 to the general orders.

20 BY MR. GERHARDSTEIN:

21 Q. When you acted in this manner, did you act
22 consistently with how you had been trained?

23 A. Yes.

24 Q. All right. So you've got a beam of light on his
25 chest and where on his chest? Just show me with

1 your finger.

2 A. Around the area right here in the middle
3 (indicating).

4 Q. So you call that center mass?

5 A. About center mass, yes.

6 Q. The sternum?

7 A. I would say so, yes.

8 Q. So you've got your light beam there, did you say
9 to him anything with respect to what you were
10 going to do?

11 A. No. I just -- sir, get on the ground.

12 Q. Did you say taser, taser?

13 A. No.

14 Q. Did you say, sir, I'm going to tase you?

15 A. No.

16 Q. How long did you point your taser with the light
17 at his chest?

18 A. It wasn't long. I can't remember how long.
19 Everything happened very fast.

20 Q. And what did he do when you had your taser out?

21 A. Took another step towards me.

22 Q. And you told him to do what?

23 A. Get on the ground.

24 Q. And then what happened?

25 A. He took another step towards me. As he took

1 another step towards me, I pulled the trigger,
2 tried to hit him with the taser.

3 Q. So at that point was he, like, five feet away?

4 A. He was about -- because every time he took a
5 closer to me, I took a step back. He seemed --
6 the guy was -- he was well within distance where
7 he could probably get to me very quick. So every
8 time he took a step towards me, I took a step
9 back.

10 Q. So how many feet away do you think he was at the
11 time you tased him?

12 A. Same amount of feet. Five, six feet. You know,
13 every time he took a step towards me, I took a
14 step back.

15 Q. When you shot the taser at him, did both prongs
16 strike him in the chest?

17 A. No. The way the prongs shoot, they both wouldn't
18 have struck him in the chest.

19 Q. Where did they strike him?

20 A. Well, I don't remember where the first -- where
21 the actual second one hit him. The first one hit
22 where the taser hit, but they go in a way where
23 they kind a spread apart when they hit it. If
24 the second one hit him, maybe it could have hit
25 him in the leg, the stomach, or it probably

1 couldn't have made contact at all. I'm not sure.

2 Q. Would you agree that the closer you are to a
3 subject, the shorter the prong spread?

4 A. Yes.

5 Q. And would you agree that if you don't have a very
6 broad prong spread, okay, and both prongs hit the
7 chest, that type of shot does not incapacitate a
8 person so that they would fall down?

9 MR. KAISER: Objection.

10 BY MR. GERHARDSTEIN:

11 Q. Do you understand the question?

12 A. The closer they are, yeah, it would probably be
13 that way.

14 Q. Because if you don't have one prong above the
15 waist and one prong below, it may not be a big
16 enough prong spread to accomplish knocking the
17 guy over; right?

18 MR. KAISER: Objection.

19 A. I don't know. Some people react differently.

20 Q. Well, you understand that the purpose -- the goal
21 is to have one prong above the chest and one
22 prong below the waist; right?

23 MR. KAISER: Objection.

24 A. No.

25 O. You don't understand that?

1 A. No. You're saying that's the purpose, I don't
2 understand that's the purpose.

3 Q. Well, isn't the goal to use the taser to
4 incapacitate the muscles?

5 A. Yes.

6 Q. And isn't the goal to use the taser so that the
7 muscles are incapacitated and the person falls
8 over?

9 A. Yes. And then when the person falls over and
10 while they're under power, your partner is
11 supposed to cuff him; right?

12 A. Yes.

13 Q. So if he doesn't fall over, something goes wrong;
14 right?

15 MR. KAISER: Objection.

16 A. I'm not sure what you're saying.

17 Q. Well, the goal was to have him fall over?

18 A. You're saying that the taser didn't work?

19 Q. The taser was ineffective; right?

20 A. Yes, the taser was ineffective.

21 Q. And one reason a taser can be ineffective is if
22 both prongs hit the chest; right?

23 MR. KAISER: Objection.

24 A. It would be less, I would guess. I would
25 probably say it would probably be less effective.

1 MR. KAISER: Al, when
2 you reach a convenient point would you
3 mind giving me a short break?
4 MR. GERHARDSTEIN: Okay, just
5 hold on.
6 BY MR. GERHARDSTEIN:
7 Q. You shot your taser and Mr. Brown -- and you saw
8 at least one prong hit his chest; right?
9 A. Yes.
10 Q. And you're just not sure where the other prong
11 went?
12 A. No.
13 Q. And then what happened?
14 A. It had no affect. He took another step towards
15 me, then he took off -- he started running
16 eastbound on Benham.
17 Q. And during this whole episode when he was
18 running, you were chasing him; right?
19 A. My partner, we were both chasing him.
20 Q. And did you ever determine whether the wire
21 connected to the prong severed or were you able
22 to stay within 25 or 21 feet?
23 A. I do remember for a moment I was able to stay
24 with him, but -- so one wire was connected.
25 Whether both wires were connected, I'm not sure.

1 Q. So at least as of the time you started wrestling,
2 one wire was still connected?

3 A. I don't know if it was mine, because my partner
4 also tried tasing him, but one wire, you know,
5 was still on him.

6 Q. And you say that because you saw it on him?

7 A. Yes. After the fight I remember seeing -- like
8 the guys there were getting evidence up and I
9 remember seeing the taser wire on him -- on the
10 ground.

11 MR. GERHARDSTEIN: Well,
12 we'll pick it up after we accommodate a
13 break.

14 MR. KAISER: Thank you.

15 THE VIDEOGRAPHER: Off the
16 record.

17 (Thereupon, there was a brief recess.)

18 THE VIDEOGRAPHER: On the
19 record.

20 BY MR. GERHARDSTEIN:

21 Q. Resuming.

22 Mr. Chapman, when did you join the Cleveland
23 Police Department?

24 A. October 15th, 2007.

25 Q. How old are you?

1 A. I am 33.

2 Q. On December 31st, 2010 did your zone car have a
3 GPS locator?

4 A. Yes.

5 Q. And just tell me what that means.

6 A. Well, it's called an AVL. It's more so that it
7 can -- just like a GPS, tells us where -- tells
8 whoever needs to know where our vehicle is at all
9 times.

10 Q. Is that all stored in a database somewhere?

11 A. I'm not sure. I think so, though.

12 Q. So is it your understanding that there's some
13 server somewhere that has a computerized record
14 of all the places your car went when you were out
15 on patrol?

16 MR. KAISER: Objection.

17 A. I think so.

18 Q. When you were engaged in the use of force with
19 Mr. Brown prior to the point when he ran, why did
20 you use your taser as opposed to OC spray?

21 A. Well, I felt that that would probably -- the
22 taser was probably my best option. Mr. Brown
23 seemed pretty aggressive. He was a pretty big
24 guy, seemed very strong, and I didn't think the
25 OC spray would work.

1 Q. The cartridge that you had when you deployed the
2 taser against Mr. Brown, do you know how many
3 feet the wire was or what color the door was?

4 A. Green doors.

5 Q. Green doors, and how many feet is that?

6 A. I'm not sure.

7 Q. Is that all you're issued is green cartridges?

8 A. Green door cartridge, yes.

9 Q. Is that still the case?

10 A. Yes.

11 Q. By the way, when you went on duty that night, how
12 many green door cartridges did you have?

13 A. I had three.

14 Q. Is that standard that you would have three
15 cartridges?

16 A. I'm not sure if it's standard.

17 Q. Is that what you carry every night?

18 A. Yes.

19 Q. How many total cartridges did you discharge that
20 night?

21 A. One.

22 Q. And where did you have the other two cartridges?

23 A. They were in my bag, actually. They were in my
24 bag.

25 Q. In your bag, what's that mean?

1 A. In my zone car bag. My duty bag, that's where
2 they were.

3 Q. So when you're issued these three cartridges, you
4 have one in the taser that's in the holster;
5 right?

6 A. Yes.

7 Q. And that's already loaded into the taser; is that
8 correct?

9 A. Yes.

10 Q. And then the other two cartridges are not on your
11 person?

12 A. No. Most of time they're in the bag -- I'm
13 pretty sure they were in my bag. Sometimes --
14 most times -- sometimes I just keep them in my
15 pocket.

16 Q. What about that night, did you have the other two
17 cartridges in your pocket?

18 A. In my bag.

19 Q. Are you sure?

20 A. I'm pretty sure.

21 Q. After all the events were concluded, there was an
22 investigation; right?

23 A. Yes.

24 Q. At any point did anyone investigating this use of
25 force ask you to account for the other two

1 cartridges?

2 A. No.

3 Q. So if we wanted to be sure that you hadn't
4 deployed the other cartridges, we wouldn't have
5 any way of knowing that; would we?

6 A. Yes.

7 MR. KAISER: Objection.

8 BY MR. GERHARDSTEIN:

9 Q. How would we know that?

10 A. Well, they have an -- on the blast doors they
11 have like these sprinkle things that come out and
12 that's where you can locate it. They would have
13 seen those. If these are the blast doors, where
14 are the other taser cartridge they came from.

15 Q. Do you know if the small pieces of paper that
16 accompany the blast doors were collected that
17 night from your taser?

18 A. I don't know.

19 Q. Have you ever discharged your firearm while on
20 duty?

21 A. No.

22 MR. KAISER: You mean
23 the firearm?

24 MR. GERHARDSTEIN: Yeah, the
25 firearm.

1 MR. KAISER: Okay.

2 A. No.

3 Q. Have you ever been involved in an investigation
4 where somebody has discharged their firearm?

5 A. No.

6 Q. Are you aware that when you're involved in such
7 an investigation, they count all the bullets?

8 A. Yes.

9 Q. But in this instance they didn't count your other
10 two tasers; right?

11 A. Taser cartridges?

12 Q. Right.

13 A. No.

14 Q. Is that correct?

15 A. Yes, they didn't count them.

16 (Thereupon, Plaintiff's Exhibits 1 and 2
17 to the videotaped deposition of Officer
18 Michael Chapman were marked for purposes
19 of identification).

20 (Thereupon, there was a discussion off the
21 record.)

22 BY MR. GERHARDSTEIN:

23 Q. I'm going to show you what's been marked as
24 Exhibit 2. This is a map of the area.
25 Can you indicate on this map the direction

1 that Mr. Brown traveled? And use an X for where
2 you interacted with him and then a Y for where
3 you ended up in your wrestling match with him.

4 Start with an X and end with a Y, if you
5 would, please.

6 A. You want me to write it down?

7 Q. Yes.

8 So you started at the corner of 113th and
9 Benham?

10 A. Yes.

11 Q. And his vehicle was on which street?

12 A. East 113th.

13 Q. Okay. And go ahead and show me the path that he
14 traveled.

15 Q. So he started at the X and he ended at the Y; is
16 that correct?

17 A. Yes.

18 Q. Did he travel on the roadway?

19 A. In between grass, into the road, going up Benham.

20 Q. When you say in between the grass and the road --

21 A. He ran on the grass, onto the road, onto the
22 road, onto the grass.

23 Q. Are there trees along the roadway?

24 A. I can't remember.

25 Q. Did he go behind any houses?

1 A. No.

2 Q. So he was basically on the tree lawn or on the
3 road?

4 A. Yes.

5 Q. And then where you finally had your interaction
6 with him, was that a driveway?

7 A. It was on a front lawn.

8 Q. And how long did you spend wrestling with him?

9 A. As far as minutes go, I don't know, but it felt
10 like a long time.

11 Q. Did somebody tackle him?

12 A. Yes.

13 Q. Who did?

14 A. My partner, Belal Ilain.

15 Q. And you mentioned that while you were chasing
16 him, your partner also tried to tase him; is that
17 correct?

18 A. Yes.

19 Q. Did you see that taser get discharged?

20 A. Yes.

21 Q. And where did that taser strike Mr. Brown?

22 A. It appeared to hit him in the back.

23 Q. And then when you actually arrived at the spot
24 where you were wrestling with Mr. Brown, I think
25 you mentioned that you tried to drive stun him;

1 is that correct?

2 A. Yes.

3 Q. When you tried to drive stun him were some of
4 those efforts -- by the way, just explain to me
5 the difference between discharging the taser in
6 prong mode and discharging it as a drive stun.

7 A. Well, in drive stun -- of course, when the prongs
8 shoot out and hit you. In drive stun there are
9 no prongs, it's just the electrical shock that,
10 you know, you hit a person with it and try, you
11 know, incapacitate them right there with the
12 taser directly on the skin or the clothing.

13 Q. A drive stun can be initiated with the cartridge,
14 the discharged cartridge, still loaded onto the
15 weapon; right?

16 A. Yes.

17 Q. Is that what you did?

18 A. I can't remember.

19 Q. Did you take the cartridge off before you applied
20 the weapon to his skin?

21 A. I can't remember.

22 Q. If the cartridge is still in the weapon and the
23 prong is still in the skin and the wire is still
24 connected, then you accomplish a larger area of
25 incapacitation; right?

1 A. Yes.

2 Q. And if the cartridge is not in the weapon and
3 you're simply applying the end of the weapon to
4 the skin, you're inducing pain; right?

5 A. Yes.

6 Q. But you're not really incapacitating muscles;
7 right?

8 MR. KAISER: Objection.

9 A. I'm not sure how that would be. I'm not sure how
10 the muscles would work as far as that, you know.

11 Q. So you just don't know whether you're
12 incapacitating muscles when you do a drive stun
13 without the cartridge attached?

14 A. I mean, you're asking me how -- I'm sure -- I
15 mean, it does incapacitate the muscles in some
16 way, but, I mean, of course, it wouldn't have the
17 broad effectiveness of two wires and a drive
18 stun.

19 Q. So it's your belief that a drive stun
20 incapacitates muscles?

21 A. Not as effective as a prong -- effective prong
22 shot.

23 Q. Have you heard of the drive stun being described
24 as a pain compliance tool?

25 A. I can't remember.

1 Q. It does induce pain; right?

2 A. Yes.

3 Q. Your use of your taser weapon against Mr. Brown,
4 you applied the end of the taser weapon to his
5 back?

6 A. We were rolling and fighting, I can't remember
7 where it actually hit him.

8 Q. So it could have been applied to his front or his
9 back or his side ==

10 A. Yes.

11 Q. -- you don't know; is that correct?

12 A. Yes.

13 Q. Do you know how many times?

14 A. No, I don't know how many times.

15 Q. And is it your understanding that your partner
16 was doing the same thing?

17 A. Yes.

18 Q. Why were you using that technique?

19 A. Because we still had our tasers out and we
20 figured that's been -- we've seen it effective
21 before and we figured it probably would be more
22 effective if we tried it again.

23 Q. Tell me about that.

24 When have you seen it effective before?

25 A. Throughout the course of duties on a daily --

1 when we see -- assist other officers and they're
2 fighting with individuals and they'll use the
3 drive stun on them and that they comply once that
4 happens.

5 Q. So you've witnessed that?

6 A. Yes.

7 Q. Have you ever administered the drive stun before
8 yourself?

9 A. I think I have. I can't really remember. Before
10 that, I can't remember.

11 Q. Can you describe for me any specific incident
12 when you administered the drive stun to a suspect
13 prior to Mr. Brown?

14 A. No, I can't remember.

15 Q. How about since Mr. Brown?

16 A. I can't remember.

17 Q. Can you describe for me any specific incident
18 where you observed a colleague administer the
19 drive stun to a suspect effectively?

20 A. Yes.

21 Q. Tell me about that.

22 A. Well, there was a vehicle pursuit that we had
23 assisted on and he ended up getting out of the
24 car, running. It ended up being a foot pursuit.
25 They ended up catching him and he was fighting

1 with them, fighting and fighting and refused to
2 obey commands. One of the officers, you know,
3 drive stunned him in the back. At that point he
4 gave up.

5 Q. Was that before or after Mr. Brown?

6 A. I can't remember.

7 Q. When the taser is deployed either in prong mode
8 or drive stun, are you supposed to complete any
9 paperwork?

10 A. A report and -- I think most of the paperwork
11 goes to my supervisors.

12 Q. What is the paperwork that you have to fill out?

13 A. Use of non-deadly force.

14 Q. Is there a form number for that or a specific --

15 A. As far as the form number, I don't know the
16 actual form number, but it's just a use of
17 non-deadly force sheet. My supervisors fill it
18 out.

19 Q. The supervisor fills it out?

20 A. Yes.

21 Q. You don't fill it out?

22 A. I've seen officers fill it out. I've seen
23 supervisors fill it out. I've never filled it
24 out myself.

25 Q. Well, in connection with your use of force on Mr.

1 Brown, did you complete any paperwork yourself?

2 A. No.

3 Q. Is that your understanding of a normal way to
4 proceed after using the prongs?

5 A. After it becomes a homicide, homicide takes
6 everything. I have absolutely -- we do not put
7 our fingers -- we don't touch any paperwork.
8 Homicide takes everything.

9 Q. So you didn't fill out an incident report?

10 A. No.

11 Q. You didn't fill out a Form 1?

12 A. A Form 1, I'm not sure. I think I did, but I'm
13 not sure. I don't think -- I can't really
14 remember.

15 Q. If you had filled out an incident report in
16 December of 2010, was it the practice of the
17 Cleveland Police Department to have the officer
18 hand write it and then have typists type it into
19 the system?

20 A. Do you mean on that night?

21 Q. During that period of time.

22 A. Well, you're talking about just any night, is
23 that what you mean?

24 Q. Yes.

25 A. Incident report, yes, we can either hand write it

1 or type it out ourselves.

2 Q. When you have filled out incident reports, do you
3 tend to type them directly into the system?

4 A. Sometimes I write it, sometimes -- it all depends
5 just how I'm feeling that day.

6 Q. And when you hand write it --

7 A. Yes.

8 Q. -- what happens to the handwritten copy?

9 A. Well, we have a bin where we put the original
10 copies. We make another copy. It depends on the
11 type of report. We just make the original copy
12 and a copy and then make a copy for the detective
13 bureau.

14 Q. In connection with Mr. Brown, did you hand write
15 any reports, at all?

16 A. No.

17 Q. Did you type write any reports, at all?

18 A. No incident reports.

19 Q. Any other reports?

20 A. Maybe the Form 1. I don't know if -- that could
21 be the only one I can think of if I did do one,
22 but I can't remember.

23 Q. On December 31, 2010, as of that date, had you
24 been advised that Taser International had
25 recommended that the preferred target zone be

1 moved from the upper chest to the lower chest and
2 the abdomen?

3 MR. KAISER: Objection.

4 A. I can't remember.

Objection.

5 Q. As of December 31

5 Q. As of December 31, 2010 was it your understanding
6 that the upper chest was an appropriate target
7 area?

8 A. I can't remember.

9 Q. Well, you've already testified that you were
0 following your training at the time --

11 A. M-hm.

12 Q. -- you shot Mr. Brown, is that still your
13 testimony?

14 A. Yes.

15 Q. So is it your belief that you were acting
16 consistent with your training when you shot him
17 in the chest?

18 A. Yes.

19 Q. And if that were all to have happened today,
20 would that still be consistent with your training
21 to shoot him in the chest?

22 A. If it would be practical. I'm not really sure
23 what you're asking me.

24 Q. I'm asking you if your understanding today is
25 that the preferred target zone remains the upper

1 chest?

2 A. I would have to -- if the preferred target zone,
3 I'm not sure. If it's changed, I'm not sure.

4 Q. So as we sit here today, do you have any
5 awareness one way or the other as to whether the
6 upper chest remains an acceptable target area for
7 a taser in prong mode?

8 A. If it's changed, I guess it wouldn't be the upper
9 chest area.

10 Q. But my question to you is has it changed or not?

11 A. I'm not sure. I'd have to look it up.

12 Q. Well, you carry a taser every day; right?

13 A. Yes.

14 Q. So you might be interacting with a citizen today?

15 A. Yes.

16 Q. And when you interact with that citizen today,
17 will it be your belief, as it was on December 31,
18 2010, that it's appropriate to tase a citizen at
19 center mass?

20 A. Yes.

21 Q. Are you aware that in September -- in October of
22 2009 Taser International issued a change -- a new
23 preferred target area where they lowered the
24 target from the upper chest?

25 MR. KAISER:

 Show an

1 objection.

2 A. Is that what you're asking me, if I was aware of
3 it?

4 Q. Yes.

5 A. I'm not sure from 2009. I'm not sure.

6 (Thereupon, Plaintiff's Exhibit 3 to the
7 videotaped deposition of Officer Michael
8 Chapman was marked for purposes of
9 identification).

10 BY MR. GERHARDSTEIN:

11 Q. I'm going to show you what has been marked as
12 Exhibit 3. Have you ever seen this before?

13 A. I can't remember.

14 Q. When you get -- have you ever received a product
15 warning label on a taser?

16 A. A product warning label?

17 O. Yes.

18 A. I'm not sure what that is.

19 Q. Take a look at Page -- it starts over again, it's
20 1 of 6 towards the back of the packet.

21 You got it?

22 A. Yes.

23 Q. Have you ever seen this document before?

24 A. Just this little box right here (indicating), or
25 the whole thing?

1 Q. The whole thing.

2 A. Well, I haven't read through this. I'm not sure
3 if I've read it or not.

4 Q. Can you take a look at it and see if you have,
5 see if that refreshes your memory?

6 A. You want me to read the whole thing?

7 Q. I want you to read the six pages. I think you'll
8 be able to figure out pretty soon whether you've
9 ever seen these six pages before, if you start
10 looking at it.

11 A. I've seen things of the like. Whether this was
12 the exact one I've seen, I can't say. I've seen
13 many -- we get lots of training on taser. As far
14 as this being the exact ones, I'm not sure.

15 Q. Do you save the training you get on tasers?

16 A. Yes.

17 Q. So do you have a copy in your personal possession
18 somewhere of the various product warning and
19 product information pieces of information?

20 A. I have my general orders of taser training.

21 Q. I understand that Cleveland Police has a general
22 order related to tasers?

23 A. M-hm.

24 Q. In addition to that, do you have other taser
25 materials that you've saved from your training?

1 A. I may, I'm not sure.

2 Q. Where do you keep that?

3 A. I have a lot of my papers in my locker.

4 MR. GERHARDSTEIN: I'm going
5 to ask your attorney to help you locate
6 that, if you can.

7 THE WITNESS: M-hm.

8 BY MR. GERHARDSTEIN:

9 Q. When an update comes up about tasers, how does
10 the city communicate that to you?

11 A. Some by divisional notices or by training we
12 receive.

13 Q. What's a division notice?

14 A. It's some information, new information that they
15 give out to the districts to police officers.

16 Q. And just tell me how you actually get that.

17 A. Our supervisors post them for us and let us know
18 they're out. They'll make copies of them so
19 everybody can see them if they need to be put in
20 our general orders.

21 Q. So if you take a look at the second page of this
22 exhibit, this is a black and white copy, and
23 obviously the original document was colored. Do
24 you see the silhouette of the human being and it
25 says, preferred target areas in blue?

1 A. Yes.

2 Q. And I'm going to ask you to assume that the blue
3 is the shaded area; okay?

4 A. Okay.

5 MR. KAISER: Al, are
6 you on 2 of 6?

7 MR. GERHARDSTEIN: No, on the second page of
8 the exhibit.

9 MR. KAISER: Oh, back
10 to the original.

11 BY MR. GERHARDSTEIN:

12 Q. Have you ever seen, while you've worked in the
13 Cleveland Police Department, a document related
14 to tasers where you're advised that the preferred
15 target area is this shaded area below the upper
16 chest?

17 A. I think I have.

18 Q. And when did you receive that?

19 A. I can't remember when I received it. But, you
20 know, we receive the training when we first get
21 our tasers and also subsequent training, too.

22 Q. How long have you had tasers?

23 A. I've had it? How long I've had it?

24 Q. Yes, the whole time you've been on the police
25 department?

1 A. No, I haven't had it the whole time I was on the
2 police department.

3 Q. How long have you had it?

4 A. I can't remember the exact months or years.

5 Q. Did you have a taser prior to September of 2009?

6 A. I can't remember.

7 Q. Well, I want to get something straight here,
8 because you've just told me that you now think
9 that you have seen a taser-related document
10 indicating that the preferred target area is
11 below the chest?

12 A. I said I may have, I'm not sure.

13 Q. And earlier you said that when you go out to work
14 tonight, you will think it's okay to shoot in the
15 chest, so which is it?

16 A. I see the preferred target areas.

17 Q. Right.

18 A. So, I mean, if it's practical, things happen like
19 that. If the target shot is to the chest, then
20 it's going to be the chest. But like I said, if
21 I have this, you know, the preferred target
22 areas, you know, are the shaded areas, if it's
23 practical I'll try to do that. But like I said,
24 things happen like that and if the best shot I
25 have is at the chest, then I'll take the shot at

1 the chest.

2 Q. On December 31, 2010 did you know that the
3 preferred target area was below the chest?

4 A. I wasn't thinking about that.

5 Q. No, that's not my question.

6 Did you know that the preferred target area
7 was below the chest?

8 A. I'm not sure.

9 Q. In the subsequent investigation of the use of
10 force did anyone ask you about whether you
11 attempted to shoot Mr. Brown below the upper
12 chest?

13 A. No.

14 Q. Is it your understanding, based on the results of
15 that whole investigation of the use of force
16 against Mr. Brown, that it was okay to shoot him
17 in the chest?

18 A. Can you ask me that again, please?

19 Q. Is it your understanding that it was acceptable
20 to shoot him in the chest?

21 A. Yes.

22 Q. So no supervisor, no trainer, no boss in the
23 Cleveland Police Department has told you that it
24 would have been preferred to shoot him below the
25 chest; is that correct?

1 A. This is in concerning with this case?

2 Q. Correct.

3 A. No one has said that to me.

4 Q. Why did the preferred target area move below the
5 upper chest?

6 MR. KAISER: Objection.

7 Foundation.

8 A. Can you ask me again? I'm not sure what you're
9 asking me.

10 Q. Tell me why the preferred target area is no
11 longer in the upper chest.

12 A. I would have to look that up.

13 Are you asking why I didn't shoot him or why
14 Taser did it?

15 Q. Why, in your understanding -- you use this
16 weapon; right?

17 A. M-hm.

18 Q. As you understand the use of this weapon, explain
19 to me why you believe the preferred target area
20 was moved down away from the chest.

21 MR. KAISER: Objection.

22 Foundation.

23 A. I wasn't sure that -- until you mentioned it to
24 me I wasn't sure -- you told me that Taser
25 changed it, so I don't know what I can base that

1 answer to. I didn't prefer anything. You said
2 Taser changed it, and I wasn't sure -- or I was
3 aware of that.

4 Q. So you really don't know whether on December
5 31st, 2010 you were aware that the target area
6 had been moved to the lower chest or not; right?

7 A. Well, I can't -- it's hard to recollect from two
8 years ago.

9 Q. And you really don't know today --

10 A. No.

11 Q. -- whether the preferred target area is below the
12 chest --

13 A. I would probably have to refresh --

14 Q. -- is that correct?

15 A. I would probably have to refresh my memory.

16 Q. Right, because you really don't know that prior
17 to me bringing it up; right?

18 A. I would have to refresh it. Probably we received
19 so much training on so much material that a lot
20 of it you would have to constantly keep reading
21 up, keep reading up, and you may just -- you
22 know, you may not remember some things, that's
23 all.

24 Q. It's important to know how a weapon you use
25 operates; isn't it?

1 A. Yes.

2 Q. Would you agree that the taser can capture the
3 hearth rhythm?

4 MR. KAISER: Objection.
5 Foundation.

6 A. I'm not aware about heart rhythms.

7 Q. Would you agree that the taser, in prong mode,
8 penetrating the chest can interfere with the
9 heart?

10 MR. KAISER: Same
11 objection.

12 A. I'm not sure how the heart works as far as
13 interfering with the heart.

14 Q. Prior to December 31, 2010, have you ever been
15 advised that there is some risk that the taser
16 can interfere with the hearth rhythm?

17 A. I would have to -- I don't remember as far as
18 prior to 2010.

19 Q. As we sit here today, have you ever been advised
20 that there is some risk that a taser can
21 interfere with the hearth rhythm?

22 MR. KAISER: Objection.

23 A. I probably have been advised, but I'm not sure.

24 Q. As of December 31, 2010, were you ever advised
25 that the taser can interfere with breathing?

1 A. I'm not sure as far as prior to 2010. I'm not
2 sure.

3 Q. As we sit here today in 2012, have you ever been
4 advised that a taser in prong mode, discharged to
5 the chest can interfere with breathing?

6 MR. KAISER: Objection.

7 A. I'm not sure.

8 (Thereupon, Plaintiff's Exhibit 4 to the
9 videotaped deposition of Officer Michael
10 Chapman was marked for purposes of
11 identification).

12 BY MR. GERHARDSTEIN:

13 Q. I'm going to show you what's been marked as
14 Exhibit 4, have you ever received training
15 regarding the taser in 2009?

16 A. Excuse me?

17 Q. Did you receive any training regarding the taser
18 in 2009?

19 A. I'm not sure. I can't remember when I actually
20 received the taser.

21 Q. Do you have a yearly update when you qualify for
22 taser?

23 A. We don't get taser training every year as far as
24 our in-service goes.

25 (Thereupon, Plaintiff's Exhibit 5 to the

1 videotaped deposition of Officer Michael
2 Chapman was marked for purposes of
3 identification).

4 BY MR. GERHARDSTEIN:

5 Q. I'm going to show you what has been marked as
6 Exhibit 5, this is selected portions of your
7 training file.

8 Have you ever seen your training file?

9 A. No, I haven't seen my training file.

10 Q. This top document is dated September 16th, 2010.

13 A. A woman relative?

14 Q. Yes.

15 A. No, I don't have a woman relative.

16 Q. Because there was a female Chapman stuff mixed in
17 with yours.

18 A. Okay. No.

19 Q. At any rate, September 16th, 2010 is the date of
20 this top page and it indicates that you received
21 taser/ASP recertification four hours. Does that
22 refresh your recollection as to whether you
23 received taser training in 2010?

24 A. Yes.

25 Q. And do you know what that consisted of?

1 A. I have to go over it. As far as 2010 I'm sure
2 changes have been made, but as far as tell you
3 what actually happened, outside of this I can't
4 remember. I can't tell you what happened on
5 2010.

6 Q. The second page of the exhibit is dated September
7 14th, 2010 and it looks to be a certification
8 test on the X26 based on Version 15 of the taser
9 materials. Would you agree with that?

10 A. Yes.

11 Q. And, of course, all we have are the answers so
12 that doesn't tell us much; right?

13 A. Yes.

14 Q. But this reference to Version 15, in other
15 circumstances what I've typically seen is that
16 officers view a PowerPoint that has a whole bunch
17 of information and then they take a test on it.
18 Is that what you go through?

19 A. As far as 2010 that day or --

20 Q. As far as -- yeah, in order to take this test you
21 have must be given some materials?

22 A. It's like a mix of PowerPoint, practical
23 application, looking through -- they have books,
24 small books that we go through, so it's a number
25 of things.

1 Q. And it's some of those materials that you might
2 have in your locker?

3 A. Maybe, I'm not sure. I can look through it.

4 Q. All right. Now, seeing that you actually had
5 taser training on Version 15 as of September
6 14th, 2010, does that refresh your recollection
7 as to whether you were advised about the change
8 in the target zone?

9 A. Yeah, I would have -- if that's in here, I would
10 have to look it up. But I couldn't tell you
11 exactly, you know, as far as target zone goes.

12 Q. The next page is a test from 2009 based on
13 materials Version 14.2 from Taser.
14 Unfortunately, we only got two pages and I think
15 it must have been a two-sided document.

16 I'm going to ask your attorney to see if they
17 can come up with the rest of the documents. I
18 think we probably just didn't get the back side.

19 As you look at these two pages of the test,
20 actually it's the three pages because you have
21 the labeling of the taser at the back, does that
22 refresh your recollection as to the type of
23 training you go through every year?

24 A. I would have to -- it's about, I would guess,
25 about the same.

1 MR. KAISER: Al, we'll
2 look into whether there is a back side. I
3 doubt it.

4 MR. BACEVICE: Those are
5 Bates stamped.

6 MR. GERHARDSTEIN: That's
7 why.

8 MR. KAISER: They are
9 sequential.

10 MR. BACEVICE: Yes.

11 MR. KAISER: We'll have
12 to look into it.

13 MR. GERHARDSTEIN: Thank you.

14 BY MR. GERHARDSTEIN:

15 Q. Now, I want to return to Exhibit 4.

16 The page we have from these taser materials
17 has instructor notes; do you see that?

18 A. Yes.

19 Q. And I take it that when you look at a PowerPoint,
20 there's often an instructor who gives you
21 additional information and additional to what's
22 on the screen; right?

23 A. Yes.

24 Q. And these instructor notes that have a second
25 paragraph that begins, the contraction of the

1 thorax that may be induced by some taser
2 applications, but not all applications, may
3 impede breathing; did I read that correctly?

4 A. Yes.

5 Q. Does that refresh your recollection as to whether
6 you've ever been advised, in any of your taser
7 training, that the application of the taser can
8 impede breathing?

9 A. If it's been advised to me, I can't remember the
10 exact date or the exact training date.

11 (Thereupon, Plaintiff's Exhibit 6 to the
12 videotaped deposition of Officer Michael
13 Chapman was marked for purposes of
14 identification).

15 BY MR. GERHARDSTEIN:

16 Q. I'm going to show you what's been marked as
17 Exhibit 6. Can you tell me what this is?

18 A. It says -- it looks like a GPO from October 2005.

19 Q. And then revised date is May 7th, 2007?

20 A. Yes.

21 Q. Now, of course, we asked for the general order in
22 effect at the time of the use of force and this
23 is what was produced to us.

24 Do you know whether the general order on
25 tasers that was in effect on December 31, 2010

1 was last revised on May 7th, 2007?

2 MR. KAISER: Show an
3 objection to the GPOs.

4 A. I don't know the revised date.

5 Q. Okay. Well, if you should learn that what's been
6 produced to us is not the general order that was
7 in effect in 2010, please advise us; okay?

8 A. Okay.

9 Q. On Page 3 of this exhibit, IV A, it indicates
10 that officers shall have EMS respond to the scene
11 to evaluate a subject who has been exposed to a
12 taser shock; did I read that correctly?

13 A. Yes.

14 Q. So is it your understanding that anytime you
15 deploy a taser into a suspect that EMS should be
16 called?

17 A. Yes.

18 Q. Did you call EMS after deploying the taser into
19 Mr. Brown?

20 A. No.

21 Q. And why not?

22 A. Well, I was aware that another officer did it.

23 Q. Who did it?

24 A. I'm not sure which officer.

25 Q. How did you become aware of that?

1 A. I was just told -- I can't remember which officer
2 told me. I remember somebody mentioning that EMS
3 was already called.

4 (Thereupon, Plaintiff's Exhibit 7 to the
5 videotaped deposition of Officer Michael
6 Chapman was marked for purposes of
7 identification).

8 BY MR. GERHARDSTEIN:

9 Q. I'm going to show you what's been marked as
10 Exhibit 7. Have you ever seen a document like
11 this before?

12 A. No.

13 Q. This is called an event chronology. Apparently
14 it's a sort on by an incident number of radio
15 traffic with respect to a specific incident.
16 Does that make sense?

17 A. Can you repeat that last part? I'm sorry.

18 Q. It appears to be a sort of radio traffic by an
19 incident so that you're only getting the radio
20 traffic with respect to a specific incident?

21 A. Yes.

22 Q. Now, is it your testimony that you've never seen
23 a document like this which records the radio
24 traffic about a specific incident?

25 A. I can't remember ever seeing anything like that.

1 Q. In your training have you ever been trained with
2 respect to how to read documents like this?

3 A. Not specifically like this. I can't remember
4 anything like that this.

5 Q. Have you ever seen any of the printout of radio
6 traffic with respect to the incident involving
7 Mr. Brown?

8 A. No.

9 Q. Did you use your radio, at anytime after Mr.
10 Brown started running, up until the time he was
11 secured?

12 A. Yeah, yes.

13 Q. Now, in this particular event chronology it
14 suggests that the traffic stop started at
15 8:45:05; does that sound right?

16 A. Yes.

17 Q. All right. About the middle of the page at
18 8:48:20 there is a request for another car; do
19 you see that? 8:48:20 is on the left-hand
20 column.

21 A. Yes, I see.

22 Q. Reading across it says, request another car, do
23 you know if you were the one who requested
24 another car?

25 A. I don't know who requested for another car.

1 Q. Now, at 8:48:58 it says, ML still resisting,
2 multiple taser not working. Is that a radio
3 broadcast that you made?

4 A. Yes.

5 Q. And what's ML refer to?

6 A. Male, I would guess. Male still resisting.

7 Q. And at 8:49:06 it says SB multiple taser not
8 working. ML still resisting. If you know, what
9 does SB stand for?

10 A. I don't know what SB stands for.

11 Q. Are these radio broadcasts that you made, if you
12 you know?

13 A. The male still resisting, the first one. I don't
14 remember if I made the second one.

15 Q. But you know that you did one something like
16 that?

17 A. Yes.

18 Q. What does -- at 8:49:35 it says ML pos. high on
19 wet?

20 A. Possibly high on wet.

21 Q. And what is wet?

22 A. It's a drug, a PCP.

23 Q. And is that -- what's your experience with it and
24 tell me what that means to you, the type of
25 statement.

1 A. Males -- a lot of males that we dealt with who
2 have been high on wet, they're very aggressive.
3 They're impervious to pain. They -- a lot of
4 them don't listen to your commands. Some do.
5 Some are docile. Some are very aggressive.
6 Super human strength. I've seen a male high on
7 wet get hit with a taser shot and actually had no
8 affect on him.

9 Q. Now, did you ever become aware of the toxicology
10 report on Mr. Brown?

11 A. Yes.

12 Q. And what did you learn about it?

13 A. That he didn't have any wet in his system.

14 Q. Right.

15 Further on at 8:50:42 there is a broadcast,
16 crowd gathering?

17 A. Yes.

18 Q. Is that a broadcast you would have made?

19 A. I think I did make that one.

20 Q. Now, as of 8:50:42 was Mr. Brown subdued?

21 A. No, as far as -- I mean, according to this, I
22 think that this is when -- this is when he was
23 saying, go get my people, go get my people.

24 That's when I think the crowd gathering started
25 to come in.

1 Q. And, frankly, what I'm trying to do is between
2 your recollection and looking at this, maybe we
3 can pinpoint some of the times that things
4 happened.

5 Further on at 8:50:47 it says, has crowd, INC
6 on East 113th. Do you have any clue as to what
7 INC means?

8 A. I'm not sure. I would probably -- maybe
9 incoming. I'm not sure.

10 Q. Oh, all right. Were they coming from that
11 direction?

12 A. They were coming from Benham towards us.

13 Q. But you were on 114th; right?

14 A. Yes.

15 Q. Now, 8:52:08, which is on Page 2 of 5 of this
16 event chronology, it says, slow it down, DN, I
17 assume it's down, male in custody; did I read
18 that correctly?

19 A. Yes, that's the right one.

20 Q. Did you make that broadcast?

21 A. No.

22 Q. Who did?

23 A. I don't know.

24 Q. And I don't know if you can tell, do you see any
25 indication on this printout as to who the person

1 making the broadcast is?

2 Like I see back on the first page it says unit
3 4 B 24.

4 A. M-hm.

5 Q. Like in that very first entry.

6 A. M-hm.

7 Q. That's your unit; right?

8 A. Yes, yes.

9 Q. But on all of these various entries, we don't
10 always see a unit. This operator number, that is
11 not any number that you went by; right?

12 A. No.

13 Q. So do you know who would have said, slow it down,
14 male in custody?

15 A. No, I don't know.

16 Q. At that point when Mr. Brown was in custody,
17 where were you?

18 A. I don't know. I was like -- I was still probably
19 on the ground, because for a long time I was on
20 the ground just spitting and trying to catch my
21 breath. Getting up, walking around, still trying
22 to catch my breath. For a long time I was trying
23 to catch my breath.

24 Q. After you disengaged -- by the way, did you
25 disengage at the point Mr. Brown was secured?

1 MR. KAISER: Objection.

2 Asked and answered.

3 A. No. I disengaged when the other officers came on

4 scene.

5 Q. He was not yet cuffed?

6 A. Yes.

7 Q. At any point after you disengaged and before the

8 end of the event, did you have any contact with

9 Mr. Brown?

10 A. No.

11 Q. At any point after you disengaged and before the

12 end of the event, did you say anything to Mr.

13 Brown?

14 A. No.

15 Q. At any point after you disengaged and before the

16 end of the event, did Mr. Brown say anything to

17 you?

18 A. No.

19 Q. At any point after you disengaged and before the

20 end of the event, did you say anything to any of

21 your brother or sister officers about what had

22 happened up to that point?

23 A. I can't remember. I can't remember.

24 Q. Do you recall any conversation with the officers

25 as they arrived to join in the efforts to

1 restrain Mr. Brown that you engaged in?

2 A. Yes. I remember with my partner and I went --
3 when Vargas, Officer Vargas, first showed up and
4 he had his taser pointed and my partner yelled,
5 the tasers aren't working, you know the tasers
6 aren't working, don't use it. That's the only
7 thing I can think of. The only thing I remember.

8 Q. Would that have occurred before 8:52:08 when
9 apparently Mr. Brown was in custody?

10 A. Well, I don't know the time. I don't remember
11 the time.

12 Q. Well, in terms of the sequence, though, that
13 would have occurred before he was in custody;
14 right?

15 A. Well, I would have to read the whole thing to
16 know when he was actually in custody, because
17 someone can call in custody and the male may not
18 be in custody.

19 Q. Oh. So tell me how you use that term.

20 If somebody said, slow it down, male in
21 custody, what's your understanding of what
22 message that is intended to send out?

23 A. That the male is in custody.

24 Q. So actually, physically restrained?

25 A. Yeah. Sometimes they -- someone can give it out

1 too early because they see the officers there and
2 they think the male is custody, when the male is,
3 in fact, not in custody. They're still holding
4 him or fighting with him.

5 Like my custody is the male is in cuffs and
6 that's it.

7 Q. Now, this notion slow it down, is this an effort
8 to indicate that officers that are not at the
9 scene don't have to come rushing?

10 A. No, that's -- yeah, just don't go lights and
11 sirens. If you're still going to come, don't go
12 lights and sirens trying to break your neck
13 getting there.

14 Q. At 8:55:31 there's a broadcast that says, needs
15 EMS. Did you make that broadcast?

16 A. I don't remember.

17 Q. Have you ever been questioned, during the course
18 of any investigation into this incident, about
19 any communications with EMS?

20 A. No.

21 Q. Did you have any conversation with anyone from
22 EMS when they arrived at the scene?

23 A. No.

24 Q. Did you see Mr. Brown getting placed into the
25 zone car?

1 A. Yes.

2 Q. Whose zone car was he placed into?

3 A. It was Officer Rusnak and Officer Merritt's zone
4 car.

5 Q. Was he bleeding?

6 A. I don't know.

7 Q. He had a long crease on his chest at autopsy, do
8 you know how he got that?

9 A. I don't know how he got that.

10 Q. Tell me which officers moved Mr. Brown into the
11 zone car.

12 A. I don't remember which officers moved him to the
13 zone car.

14 Q. Describe how Mr. Brown acted as he was moved into
15 the zone car.

16 A. I can't remember how he acted. I wasn't, like,
17 right there, you know, because I was still
18 huffing and puffing. For the longest time I was
19 huffing and puffing, just trying to catch my
20 breath.

21 Q. So as we sit here today, do you have any
22 recollection as to whether Mr. Brown was
23 cooperating, whether he was dragging himself,
24 whether he was limp, anything at all?

25 A. No, not from -- after I disengaged, no.

1 Q. As we sit here today, do you have any
2 recollection of seeing him being placed in the
3 zone car?

4 A. Yeah, I saw him get placed in the zone car.

5 Q. Did he voluntarily sit down in the zone car or
6 was he thrust into the zone car by the officers?

7 A. I don't think he was thrust in there. I don't
8 remember seeing him get thrown or forcibly -- I
9 mean, it was just, you know, putting him in the
10 zone car. I don't know if he voluntarily went on
11 his own. I mean, I don't know if he was still
12 fighting with them after he was handcuffed, I
13 don't know.

14 Q. Give me your best recollection of whether he was
15 placed in the zone car so that he was lying on
16 the seat or whether he was placed in the zone car
17 whether he was sitting. What's your best
18 recollection?

19 A. I really don't know. I can't remember. Like I
20 say, I wasn't the one that put him in the zone
21 car. There was a lot of officers on scene at
22 that time.

23 Q. So as we sit here today, you just don't have a
24 visual image of him being placed in the zone car?

25 A. I remember him getting put in the zone car. As

1 far as who or how, you know, but it didn't seem
2 like -- I don't recollect that he was thrust or
3 thrown into the zone car at that time.

4 Q. When he went into the zone car was he facing the
5 back seat or the front seat?

6 A. You can't face the back seat.

7 Q. I'm sorry, was he lying down so his face was
8 towards the back of the bench seat?

9 A. I can't remember.

10 Q. Was he seated or lying?

11 A. I can't remember.

12 Q. Were the windows up or down in the zone car that
13 he was placed into?

14 A. I can't remember.

15 Q. Prior to EMS arriving, did you ever hear any
16 sounds coming from Mr. Brown after he was placed
17 in the zone car?

18 A. No.

19 Q. Prior to EMS arriving, did you observe any of
20 your brother or sister officers apparently
21 engaged in conversation with Mr. Brown at the
22 zone car?

23 A. Yeah, I do remember an officer saying something
24 to him. Which officer it was, I can't remember
25 which officer, but I do remember an officer

1 saying something to him.

2 Q. When that officer -- was that a male or a female?

3 A. It was only males that assisted.

4 Q. When that officer spoke to Mr. Brown, did that
5 officer open the door?

6 A. Yes, he did open the door.

7 Q. And how long was that door open?

8 A. I don't know.

9 Q. Was Mr. Brown, when that door was open, was he
10 seated or lying down?

11 A. I don't know.

12 Q. Did you hear any screaming or kicking or any
13 other loud sounds coming from the zone car?

14 A. No.

15 Q. Were you close enough to hear those, had they
16 been made?

17 A. If the door was open, I probably would have been
18 close enough to hear.

19 Q. How far were you from the zone car that Mr. Brown
20 was placed into?

21 A. I can't remember. I did a lot of walking around
22 and it was a long time before I caught my breath.

23 THE VIDEOGRAPHER: Off the
24 record.

25 (Thereupon, there was a brief recess.)

3 BY MR. GERHARDSTEIN:

4 Q. Were you more than 10 feet away from the zone car
5 as you were trying to catch your breath?

6 A. I can't remember.

7 Q. Before you testified that you believe you would
8 have heard any loud noises coming from the zone
9 car, so can you give me some clue? Less than 20
10 feet?

11 A. I couldn't really give you an exact. I mean, but
12 I've heard people screaming with the door open
13 from houses away.

14 Q. Okay. And, again, which zone car was it? I know
15 you said this one, I just need to --

16 A. Whose zone car was it?

17 Q. Yes.

18 A. It was Officer Merritt and Officer Rusnak's zone
19 car.

20 Q. Now, returning to Exhibit 7, at 8:54 unit 4 D 27,
21 do you know who that would be?

22 A. No, not on that date. I didn't know who that
23 was.

24 O. But that would be another zone car?

25 A. Yes.

1 Q. Then it says, status DP, location East 113th and
2 Benham, is that departing?

3 A. I don't know what DP stands for.

4 Q. When you arrive at a location where there's
5 activity, do you naturally radio your unit and
6 give a location?

7 A. Yes.

8 Q. And so do you use those terms, departing or
9 arriving?

10 What's your lingo?

11 A. It's about the same. 4 28 show us on scene. 4
12 24 arriving. That's about that. I mean, you can
13 use other arriving terms, other synonyms.

14 Q. So 4 D 27, 28 -- oh, I see. So 4 D 27 departing
15 at 54:16 for that location, then 4 D 27 arriving
16 at 54:21 at that location; do you see that, too?

17 MR. KAISER: Objection.

18 BY MR. GERHARDSTEIN:

19 Q. Does that make sense to you?

20 MR. KAISER: Al, he
21 testified earlier he doesn't know what DP
22 stands for.

23 MR. GERHARDSTEIN: I

24 understand, but --

25 MR. KAISER: You're

1 assuming it means departing.

2 BY MR. GERHARDSTEIN:

3 Q. I'm having you work with me, okay?

4 Normally you would say that you're going
5 somewhere and then you would say when you arrive;
6 right?

7 A. Yes. Like as far as -- you pretty much know --
8 if you're heading somewhere, you let them know
9 that's where you're going. When you arrive, you
10 let them know when you get there.

11 Q. So at 8:54:21 4 D 27 arrives at 113th and Benham;
12 do you see that?

13 A. Yes.

14 Q. Then at 8:54:23 4 D 28 arrives at 113th and
15 Benham; right?

16 A. Yeah, if that's what AR means.

17 Q. Now, at 8:55:15 it says, request boss. What does
18 that mean?

19 A. Request supervisor on scene.

20 Q. And have you ever made a request like that?

21 A. Yes.

22 Q. So under what circumstances would you request a
23 supervisor on scene?

24 A. Well, for a situation as this. Use of any type
25 of force, maybe a bad accident or a domestic

1 violence. The list is very long, but those --
2 but maybe a shooting, stabbing, I mean.

3 Q. And a supervisor is -- I forget your ranks here.
4 What rank is -- do you have sergeants?

5 A. Yes, we have sergeants.

6 Q. Is that what a supervisor would be?

7 A. Yeah, but also it could be a lieutenant. But
8 normally when you say request a boss, I mean,
9 immediate supervisor would be a sergeant.

10 Q. And was there a time when a supervisor arrived on
11 the scene on December 31st, 2010?

12 A. Yes.

13 Q. Who was that supervisor?

14 A. Sergeant Sudy. I remember seeing her.

15 Q. How do you spell that?

16 A. S-U-D-Y.

17 Q. On December 31st, 2010 did you say anything to
18 Sergeant Sudy and did she say anything to you?

19 A. I remember her telling me about -- to securing
20 the area that the incident happened in as far as,
21 you know, getting some warning tape up and to go
22 to some of the houses around the area and see if
23 they had saw anything to get some witness
24 statements.

25 Q. Was this after EMS had left the scene?

1 A. Yes.

2 Q. Did you have any contact with Sergeant Sudy
3 before EMS left the scene?

4 A. I can't remember.

5 Q. Did she arrive on scene before EMS left the
6 scene?

7 A. I can't remember.

8 Q. This was New Year's Eve?

9 A. M-hm.

10 Q. And you, in the City of Cleveland, have people
11 who celebrate New Year's Eve; right?

12 A. Yes.

13 Q. And in the urban core it's not unusual to have
14 people shoot off guns on New Year's Eve; right?

15 A. Yes.

16 Q. Compared to other New Year's Eves, were the
17 gunshots that you had heard prior to this
18 incident starting any more worse than normal?

19 A. I would say New Years Eves probably some more
20 than normal.

21 Q. More than non-New Year's Eve nights?

22 A. Yes.

23 Q. Now, when you hear gunshots on New Year's Eve are
24 you assuming somebody is shooting somebody or is
25 it your experience that there are a number of

1 people that shoot into the air?

2 A. Well, I'm not sure if they're shooting somebody
3 or shooting in the air. I would say more often
4 on New Year's a lot of people are shooting into
5 the air, but I don't know if they're shooting at
6 somebody or in the air. I couldn't tell you.

7 Q. On that evening prior to the initiation of the
8 stop of Mr. Brown, you had no specific report of
9 an aggression by use of guns; right?

10 A. No. As far as for me and my partner?

11 Q. Yes.

12 A. No.

13 Q. So you were just in the neighborhood and you
14 heard gunshots like other neighbors would?

15 A. Yeah, we were in the area for an assignment.
16 After the assignment, we heard gunshots.

17 Q. By the way, what was that assignment?

18 A. I can't remember what the exact assignment was
19 for.

20 Q. After you talked to Sergeant Sudy and she
21 instructed you to secure the area, did you deploy
22 crime scene tape?

23 A. Yes.

24 Q. That's something you kept in your zone car?

25 A. I can't remember if it was in my zone car. It's

1 in some zone cars, not all zone cars. A lot of
2 supervisors have them. But some people take them
3 and put them in whatever zone car they going to
4 be working in. I can't remember if it was in my
5 zone car or somebody else's.

6 Q. Did you comply with her other request that you
7 secure any witnesses that may have identified any
8 of the events of that evening?

9 A. Yes.

10 Q. Tell me about that.

11 A. Went from door to door on that street, eastbound
12 and westbound on the street.

13 Q. On Benham?

14 A. East 114th. And around where the incident ended,
15 people who did come out said they didn't hear
16 anything. Nobody answered the other doors.

17 Q. So did you secure any witnesses who could report
18 on what they had seen?

19 A. No.

20 Q. Did you take any other steps to identify
21 witnesses?

22 A. No.

23 Q. At anytime have you ever had any conversation
24 with any individual who claims to have witnessed
25 the events of that evening?

1 A. No.

2 MR. KAISER: Al, I
3 assume on your last question you were
4 referring to civilian witnesses?

5 MR. GERHARDSTEIN: Yes.

6 Thank you.

7 (Thereupon, Plaintiff's Exhibit 8 to the
8 videotaped deposition of Officer Michael
9 Chapman was marked for purposes of
10 identification).

11 BY MR. GERHARDSTEIN:

12 Q. In the zone car when a prisoner is placed in the
13 back, I assume there's a screen between the back
14 and the front of the zone car?

15 A. Yes.

16 Q. When the prisoner is placed in the back and the
17 officer isn't located in the zone car, is there
18 an audio system that kicks on so that anybody is
19 listening to what the prisoner is saying or
20 doing?

21 A. In our zone car we don't have that. At the time
22 we didn't have it.

23 Q. What about the zone car that Mr. Brown was in?

24 A. I don't know if they had it or not.

25 Q. Have you ever heard of a system like that?

1 A. Not in the City of Cleveland I haven't.

2 Q. So in your experience in the City of Cleveland
3 using different zone cars, has anybody ever had a
4 system like that?

5 A. No. Maybe if they had it it was supplied -- like
6 they bought it themselves, but not as far as it
7 being issued to us or made part of the zone car.
8 I don't have any knowledge of that.

9 MR. GERHARDSTEIN:

Who is

10 that, Simone?

11 Is there anybody other than Officer
12 Simone who adds his own equipment to the
13 cars?

14 MR. KAISER:

I've heard
15 of at least one other, maybe there's a
16 handful of others, but I don't
17 specifically know, and I don't like being
18 deposed.

19 BY MR. GERHARDSTEIN:

20 Q. All right. Take a look at Exhibit 8. This, I
21 believe, is the event chronology from the EMS
22 system. Do you know whether EMS talks to
23 dispatchers on a different system than you do?

24 A. I don't know.

25 Q. Have you ever seen this chronology from the EMS

1 event code before?

2 A. No.

3 (Thereupon, Plaintiff's Exhibit 9 to the
4 videotaped deposition of Officer Michael
5 Chapman was marked for purposes of
6 identification).

7 BY MR. GERHARDSTEIN:

8 Q. I'm going to show you what's been marked as
9 Exhibit 9. This is the coroner's verdict and
10 autopsy report and toxicology report related to
11 Mr. Brown. Have you ever seen this before?

12 A. Yes.

13 Q. When did you have occasion to see this?

14 A. I can't remember the exact time, but I think it
15 was sometime last year when I first saw this.

16 Q. On Page 2 or Bates No. Page 203 in the lower
17 right-hand corner, there is a paragraph that's
18 numbered 4 that describes circular puncture
19 wounds on the left lower back; do you see that at
20 the top of the page?

21 A. Yes.

22 Q. Then it goes on to describe other puncture
23 wounds, do you have any reason to disagree with
24 the coroner's finding as to the location of these
25 various puncture wounds?

1 A. No.

2 MR. KAISER: Objection.

3 Foundation.

4 BY MR. GERHARDSTEIN:

5 Q. In the next paragraph there are other
6 descriptions of puncture wounds, do you have any
7 reason to disagree with the coroner's findings
8 with respect to those puncture wounds?

9 MR. KAISER: Same

10 objection.

11 A. No.

12 Q. Have you been asked about these puncture wounds
13 in the body of Mr. Brown in any investigation
14 that has included you?

15 A. No.

16 Q. Up to this point?

17 A. No.

18 Q. No one has ever reviewed the location of puncture
19 wounds on Mr. Brown in conversation with you?

20 A. No.

21 Q. As you administered the taser in prong mode, you
22 would expect a puncture wound; right?

23 A. Yes.

24 Q. As you administer a taser in drive stun mode,
25 would you expect a puncture wound?

1 MR. KAISER: Objection.

2 Foundation.

3 A. I don't -- no, not a puncture wound, no.

4 Q. Right. Because a drive stun tends to leave a
5 little burn mark; right?

6 A. I don't recall, but I would probably say so.

7 Q. When you apply the drive stun even -- well, when
8 you apply the drive stun with the cartridge in
9 it, is there any piece of hardware sticking out
10 of the cartridge?

11 A. No, it's just a cartridge itself.

12 Q. Just the wire; right?

13 A. Well, I mean, after the -- are you talking about
14 after the wire is disengaged?

15 Q. Let's say the wire is still connected to the
16 prong, and still connected to the cartridge, my
17 question is based on your experience with just
18 seeing the deployed cartridge, would you expect
19 to see any puncture wound on the skin after you
20 had applied that cartridge to the body of the
21 suspect?

22 MR. KAISER: Objection.

23 Foundation.

24 A. No.

25 Q. And when the cartridge is not in it, then you've

1 got the hardware that the cartridge attaches to
2 at the end of the weapon; right?

3 A. Yes.

4 Q. But when you apply that into the skin, that's not
5 a really sharp item that would puncture the skin;
6 is it?

7 MR. KAISER: Objection.

8 A. No.

9 (Thereupon, Plaintiff's Exhibit 10 to the
10 videotaped deposition of Officer Michael
11 Chapman was marked for purposes of
12 identification).

13 BY MR. GERHARDSTEIN:

14 Q. I'm going to show you what's been marked as
15 Exhibit 10. Have you seen that before?

16 A. I think I have, or this actual sheet or just --

17 Q. Yes.

18 A. I think I have.

19 Q. And this is the printout of the download that is
20 done from the handle where the dataport is on
21 your taser indicating the deployments of your
22 taser; right?

23 A. Yes.

24 Q. And this indicates that local time was December
25 31, 20:47 through 20:48; right?

1 A. Yes.

2 Q. Now, this indicates three taser deployments. The
3 first being 7 seconds and the other two being 5
4 seconds each; right?

5 A. Yes.

6 Q. That's a total deployment of 17 seconds; is that
7 correct?

8 A. Yes.

9 Q. It does not appear, based on this record, that
10 you spark tested your taser at the beginning of
11 your shift; right?

12 A. Yes.

13 Q. You're agreeing that --

14 A. Yeah, I did not do it.

15 Q. Have you ever been advised of any tests that have
16 been done on tasers indicating that they vary in
17 the amount of electrical output they produce,
18 beyond what the manufacturer specifications are?

19 A. I'm not sure.

20 Q. Was your taser taken from you that night?

21 A. Yes.

22 Q. And how long were you without it?

23 A. Well, I can't remember. I think they actually,
24 like, took it, period, like for the
25 investigation. Like I don't think I got it back.

1 Q. So did you get a different taser then?

2 A. Yes.

3 Q. At any point do you know whether your taser was
4 ever tested for how much electrical output it was
5 producing?

6 A. I don't know.

7 Q. In your use of the taser, either in training or
8 in testing or in field operations, have you ever
9 experienced any reaction when you used the taser
10 that made you believe that it was producing more
11 electricity than the manufacturer's
12 specification?

13 A. No, I never thought to think about that.

14 (Thereupon, Plaintiff's Exhibit 11 to the
15 videotaped deposition of Officer Michael
16 Chapman was marked for purposes of
17 identification).

18 BY MR. GERHARDSTEIN:

19 Q. Do you know whether your taser download was
20 synchronized with the times that are used by the
21 dispatcher?

22 A. I don't know.

23 Q. Has anybody ever questioned you about whether
24 your taser download times were consistent with
25 what is on the event chronology, which we've

1 marked as Exhibit 7?

2 A. No.

3 Q. Given your experience with Mr. Brown that night,
4 do you have any reason to disagree with the
5 duration of the trigger pulls that are indicated
6 on Exhibit 10?

7 A. I don't have any reason to disagree.

8 Q. So that would indicate the first trigger pull was
9 7 seconds and that would have been the one to the
10 chest; right?

11 A. Yes.

12 Q. And this indicates that within a minute you had
13 already applied two more trigger pulls, which
14 you're saying were drive stuns; right?

15 A. Yes.

16 Q. And so that is it your understanding that you
17 chased Mr. Brown and were wrestling with him and
18 applying the drive stun in less than a minute
19 from the time you had tased him by the car?

20 A. Trying to apply -- yes, I was trying to apply the
21 drive stun, but he kept smacking them away.

22 Q. I understand, but I'm just trying to use this to
23 give us a sense -- the whole chase was very
24 short, then?

25 A. Yeah. According to the time, yes.

1 Q. Have you ever had occasion to look at the
2 downloads from your partner?

3 A. No.

4 Q. And did you ever have occasion to learn whether
5 his taser was synchronized by time with your
6 taser?

7 A. No.

8 Q. Take a look at Exhibit 11. I think we've marked
9 it. This is labeled incident report, have you
10 ever seen this before?

11 A. No.

12 Q. Have you ever seen any incident report before --

13 A. Not --

14 Q. -- for any event in your history as a Cleveland
15 Police Department law enforcement officer?

16 A. Not in this manner. Not in this manner, no.

17 Q. How did you see them?

18 A. Well, the reports that I produce or may see
19 someone else make as far as RMS reports, but not
20 in this manner, how it's typed out and
21 everything, no.

22 Q. What do you mean RMS reports?

23 A. Well, it's the same as an incident report, but
24 the way we type them out we have a different type
25 of form, the way we fill them out and everything

1 else.

2 Q. So do you usually fill them out at a computer
3 terminal?

4 A. Either at a computer table or we have papers that
5 are just blank and you have to fill in the boxes.

6 Q. Are these drop-down menus on a computer form?

7 A. No, it's just -- it looks just like a regular
8 form. Not a drop-down menu, but you pull it up
9 and it just looks like a piece of paper and you
10 have to fill in the boxes.

11 Q. And then when you're done, does it save it to the
12 computer system or is it --

13 A. No, you have it either on a flash drive of your
14 own or on your desktop, however you decide to
15 save that.

16 Q. And how did you deliver that to your superior
17 officers?

18 A. You print it out and you hand it to them so they
19 can review it and make sure everything is okay
20 and they sign it. You make a copy and you put it
21 in the box it goes in.

22 Q. So this looks like it was printed out from some
23 database, do you know how this gets stored?

24 A. No. No, sir.

25 Q. Who would know that?

1 Who should I invite to a deposition?

2 A. I have absolutely no idea.

3 Q. As you look at this document, is this -- do you
4 fill out all this information when you do your
5 own incident report?

6 Even if it doesn't look like this, is this
7 capturing the same things you fill out when you
8 fill out one of these forms?

9 A. A lot of it is on here, but a lot of it's not.

10 Q. Well, I'm most interested in Page 3 or Bates
11 numbered Page 123, and there's this dispatch
12 narrative; do you see that?

13 A. Yes, I see it.

14 Q. Do you fill that out when you create an incident
15 report?

16 A. Dispatch narrative, no.

17 Q. Do you fill out a summary of the facts when you
18 fill out an incident report?

19 A. Yes.

20 Q. So did you ever create an incident report
21 regarding Mr. Brown?

22 A. No.

23 Q. Now, this has primary Michael Chapman at the top
24 of Page 123?

25 A. M-hm.

1 Q. Do you know what that means?

2 A. I'm the primary officer on scene.

3 Q. So would you normally be the one to create the
4 incident report, then?

5 A. Not for a homicide.

6 Q. So who wrote this?

7 A. I don't know who wrote this. I have to look at
8 -- this is a -- it seems this -- it says
9 reporting officer, it looks like Timothy En -- it
10 says homicide.

11 Q. Okay. So at the bottom of the first page this
12 narrative came from Detective Tim Entenok?

13 A. It looks that way.

14 Q. All right. That's helpful.

15 So would it be your understanding that the
16 dispatch narrative -- that all of the information
17 on this would have come from that detective?

18 A. I would think so.

19 (Thereupon, Plaintiff's Exhibit 12 to the
20 videotaped deposition of Officer Michael
21 Chapman was marked for purposes of
22 identification).

23 BY MR. GERHARDSTEIN:

24 Q. I'm going to show you Exhibit 12. Do you
25 recognize this?

1 A. I've never seen it.

2 Q. It appears to be an attempt to draw a diagram of
3 Mr. Brown's car at the corner of East 113th and
4 Benham; do you agree?

5 A. Yes.

6 Q. Is that the address that you were in front of on
7 East 113th, 3570?

8 A. I don't remember the address.

9 Q. Any clue as to why those particular measurements
10 are indicated on this form?

11 A. No, I don't know.

12 Q. Did anything, in particular, happen at Benham
13 where those arrows are indicated?

14 A. I don't know. I mean, that whole incident
15 happened on East 113th and Benham so what the
16 actual arrows were for, I'm not sure.

17 Q. Well, we have to visit with Detective Ronald Timm
18 for that, I guess.

19 (Thereupon, Plaintiff's Exhibit 13 to the
20 videotaped deposition of Officer Michael
21 Chapman was marked for purposes of
22 identification).

23 BY MR. GERHARDSTEIN:

24 Q. I'm showing you what's been marked Exhibit 13.
25 Do you recognize that?

1 A. I've never seen this.

2 Q. It appears to be an attempt to draw a diagram of
3 a location at East 114th near a building that had
4 a wheelchair ramp. Does that refresh your
5 recollection, at all, about how this might relate
6 to the use of force with respect to Mr. Brown?

7 A. I think this is where the incident ended, where
8 the fight between myself, my partner and Mr.
9 Brown.

10 Q. So did you have any contact with Mr. Brown at a
11 wheelchair ramp?

12 A. I don't remember a wheelchair ramp.

13 Q. Okay.

14 (Thereupon, Plaintiff's Exhibit 14 to the
15 videotaped deposition of Officer Michael
16 Chapman was marked for purposes of
17 identification).

18 BY MR. GERHARDSTEIN:

19 Q. I'm showing you what's been marked as Exhibit 14.
20 This is the EMS report with respect to the
21 dispatch of EMS and their treatment of Mr. Brown
22 on December 31st, 2010. Have you ever seen this
23 before?

24 A. No.

25 Q. Do you have any reason to disagree with the times

1 that are indicated on the first page on the
2 right-hand column?

3 A. No.

4 Q. Now, this particular report shows that EMS was at
5 the patient at 21:10, which is 9:10; right?

6 A. Yes.

7 Q. And at least as we look at the assessment area,
8 see 21:10 down there, assessments?

9 A. Yes.

10 Q. When EMS arrived, they found in assessing Mr.
11 Brown, no spontaneous respirations, no pulse and
12 a fixed gaze; did I read that correctly?

13 A. Yes.

14 Q. So he was not breathing and his heart wasn't
15 beating when EMS arrived; right?

16 A. According to this.

17 Q. And in any conversations that you've had with
18 your brother officers or the supervisor at the
19 scene, did anyone indicate to you that Mr. Brown
20 had stopped breathing and that his heart had
21 stopped beating prior to EMS arriving?

22 A. No.

23 Q. Did you talk about whether Mr. Brown was
24 breathing or whether his heart was beating, at
25 all, with any of the other officers prior to the

1 time EMS arrived?

2 A. No.

3 Q. So do you have any personal knowledge, directly
4 or indirectly, about whether Mr. Brown stopped
5 breathing before EMS arrived?

6 A. No.

7 (Thereupon, Plaintiff's Exhibit 15 to the
8 videotaped deposition of Officer Michael
9 Chapman was marked for purposes of
10 identification).

11 BY MR. GERHARDSTEIN:

12 Q. I'm going to show you what's been marked as
13 Exhibit 15. It's called a synopsis. It was part
14 of the homicide investigation file. Have you
15 ever seen this before?

16 A. No, I haven't seen it -- printed out, no, I don't
17 think I've seen this.

18 Q. Have you ever seen a version of this on the
19 computer or otherwise?

20 A. I think maybe when I was giving my statement,
21 that's the only time I've seen something like
22 that.

23 Q. So tell me about that.

24 How did it come to be that you gave a
25 statement?

1 A. Well, we were called in to talk to homicide and,
2 you know, pretty much give our statements about
3 the events that happened that night.

4 Q. How did that work?

5 A. What do you mean, how did it work in?

6 Q. How long after the event did you give the
7 statement?

8 A. I can't remember. It wasn't immediate, though,
9 because I guess they had us on administrative
10 time off. I can't remember how long it was.

11 Q. Prior to giving your statement, did you discuss
12 the events of that night with any of your brother
13 officers?

14 A. Yes.

15 Q. Tell me about that.

16 A. I spoke to Officer Jenae Wilson-Brown and told
17 her what happened.

18 Q. Any other officers?

19 A. Not that I can recollect.

20 Q. Who's Jenae Wilson-Brown?

21 A. I think she was the ex-wife -- or mother of
22 Rodney Brown's children. She's an officer.

23 Q. Did you know her?

24 A. I knew her professionally.

25 Q. When did you talk to her?

1 A. I think maybe two days -- around two days, maybe,
2 after it happened. A day or two.

3 Q. And what were the circumstances that caused you
4 to be talking to her?

5 A. Well, after I found out who -- that she was
6 related to him in some way, I figured to get in
7 contact with her and let her know, you know,
8 exactly what happened, instead of hearing it from
9 10 other people, I'd tell her exactly what
10 happened.

11 Q. That night were you involved, at all, in
12 identifying Mr. Brown?

13 A. I'm not sure what you're asking.

14 Q. He was listed as John Doe at the morgue.

15 A. Okay.

16 Q. Were you contacted, were you involved in --

17 A. No.

18 Q. -- identifying him?

19 A. No.

20 Q. How did you learn that this was Rodney Brown,
21 relative of Jenae Brown?

22 A. I can't -- it was an officer that told me. I
23 can't remember which officer or how, I know an
24 officer told me.

25 Q. And when did you learn that?

1 A. I think it was -- it -- possibly maybe a day
2 after, or I really can't recall when did I learn
3 of it.

4 Q. So tell me the circumstances, then. Just
5 describe what happened in terms of how you
6 contacted Jena Brown.

7 A. Well, I called her over her cell phone and I told
8 her everything that -- you know, I can't remember
9 the exact, like, the small talk before, but I
10 told her exactly what happened. And, you know,
11 she told me that, you know, she understood. And,
12 you know, her relationship with him was
13 tumultuous. You know, he was a big, strong guy.

14 Q. So tell me -- so, first of all, you didn't meet
15 with her; right?

16 A. No.

17 Q. You just talked to her on the phone?

18 A. Yes.

19 Q. And what did you say to her?

20 A. I told her -- you want me to repeat the --

21 Q. Yeah, tell me what you told her.

22 A. The exact -- I can't remember the exact -- my
23 exact words, but I went throughout the whole
24 scenario from the traffic stop to when he was
25 being put in the ambulance.

1 Q. How long did you speak to her?

2 A. I don't know how long. I'm guessing maybe 10, 15
3 minutes.

4 Q. What did she say to you?

5 A. You know, she understood, you know. She felt
6 sorry for me and she said that she understand
7 that we had to do what we had to do because he
8 was a strong man and he was a fighter and her
9 relationship with him was quite tumultuous.

10 Q. Did she say anything else?

11 A. Not that I can recall.

12 Q. Did you speak to anyone else?

13 A. No.

14 Q. Prior to giving your statement, did you talk to
15 your partner from the zone car?

16 A. As far as -- I mean, we talked, but --

17 Q. So did you tell him what you thought happened and
18 he told you what he thought happened?

19 A. No, we didn't go over everything. I mean, I
20 can't remember -- it was almost two years ago, I
21 can't really recall what we exactly said to each
22 other. I mean, we talked.

23 Q. Prior to giving the statement, did you review
24 with any of the other officers who were with you
25 that night what you were going to say in your

1 statement?

2 A. No.

3 Q. Were you given any instructions about whether to
4 speak with your brother officers or not?

5 A. No.

6 Q. So it was okay to speak with other officers about
7 the events of that night?

8 A. I don't know if it's okay, but I didn't speak
9 with any of the officers as far as --

10 Q. You were not instructed to stay away from
11 conversations about the events of that night
12 prior to giving your statement; right?

13 A. I really can't remember if I was instructed or
14 not. I just kind of assumed that this isn't
15 something I was going to go talking about to
16 everybody. I can't remember if I was instructed
17 or not. I really wasn't talkative anyway.

18 Q. Are you a member of a union?

19 A. Yes.

20 Q. And prior to giving your statement, did you
21 discuss the contents of your statement with any
22 union official?

23 A. I'm not sure.

24 Q. Did you receive advice, other than from an
25 attorney, about the contents of your statement

1 prior to giving your statement?

2 A. I don't remember. I don't think I did.

3 As far as advice, I'm not understanding what
4 you're asking me as far as advice.

5 Q. Did you speak with any union official about the
6 contents of your statement?

7 A. No.

8 Q. Did you talk to any union official, at all,
9 before you gave your statement?

10 A. Yes.

11 Q. Who was that?

12 A. I think Officer Kindness. He pretty much told me
13 what's going to happen. You know, they're going
14 to ask you to give a statement and you're going
15 to go give your statement. Just make sure it's
16 truth and facts. Stick to the facts.

17 Q. Did you review with Officer Kindness the details
18 of the events of that night?

19 A. No.

20 Q. Did you review with him any of the facts of the
21 events of that night?

22 A. No.

23 Q. Did you speak with any attorney, prior to giving
24 your statement?

25 I don't want to know the content of what you

1 said, I just want to know if you spoke with
2 anyone.

3 A. Before giving my statement?

4 Q. Yes.

5 A. No.

6 (Thereupon, Plaintiff's Exhibit 16 to the
7 videotaped deposition of Officer Michael
8 Chapman was marked for purposes of
9 identification).

10 BY MR. GERHARDSTEIN:

11 Q. I'm going to show you what's been marked as
12 Exhibit 16, do you recognize this?

13 A. Yes.

14 Q. This is dated January 17th, 2011 and it appears
15 to be a three-page document signed by you; right?

16 A. Yes.

17 Q. And there is a narrative here and then some
18 questions and answers typed at the back; do you
19 see that?

20 A. Yes.

21 O. Did you type this statement?

22 A. No.

23 Q. So describe for me how this statement came to be.

24 A. The detective or the officer I was -- they were
25 talking -- you know, giving them my statement.

1 He would type out everything that I told him.

2 Q. Okay.

3 A. And that would be it. I mean, I remember the
4 attorney being there, or I can't remember his
5 name, but an attorney was there. He'd just ask
6 me a question and I'd tell him what happened and
7 he would type it out.

8 Q. So where did this occur?

9 A. In the homicide department.

10 Q. And you were in a room with the officer who did
11 the typing?

12 A. Yes.

13 Q. And do you remember the name of that person?

14 A. No.

15 Q. And you were also present with an attorney;
16 right?

17 A. Yes.

18 Q. Was anybody else in the room?

19 A. Yeah. It was a big room so my partner was there
20 making his statement. He was with an officer or
21 a union rep, I think.

22 Q. So did your partner witness you making your
23 statement was he there when you were making your
24 statement?

25 A. We were in the same room, but like I was on one

1 side of the room, he was on the other side of the
2 room.

3 Q. Did you hear what your partner said when he gave
4 his statement?

5 A. No.

6 Q. How many feet away from him were you?

7 A. I don't know how many feet. I mean, it's a
8 pretty big office.

9 Q. About the size of this room we're in today?

10 A. No. Like where the hallway is, it's how big the
11 room was. And I was like at one end and he was
12 at the other end.

13 Q. So as the officer was listening to you speak and
14 typing, did you make corrections and did he alter
15 the statement, at all?

16 A. I don't think he altered the statement, but if he
17 asked me to be clearer, I would try to be as
18 clear as I could.

19 Q. Did the attorney offer any edits or suggestions
20 about the content of this statement as you
21 proceeded through this process?

22 A. No.

23 Q. Did the attorney say anything?

24 A. Not that I can remember.

25 Q. Were there any drafts of this statement printed

1 out that differed, in any respect, from the one
2 we see as Plaintiff's Exhibit 16?

3 A. I haven't seen any.

4 Q. Was this printed out while you were there?

5 A. No, I can't remember if it was printed out or not
6 while I was there. I haven't seen it.

7 Q. Is that your signature on the third page?

8 A. Of course it is then. Yes, this was printed out
9 when I was there.

10 Q. Well, are you assuming that because you see your
11 signature or do you now recall that?

12 A. Yeah, this was printed out then while I was
13 there.

14 Q. This statement says that you do not consent to
15 audio or videotaping. Was it, nonetheless,
16 videotaped or audiotaped?

17 A. No, it wasn't.

18 Q. Are you sure?

19 A. Yes.

20 Q. Did you videotape or audiotape it?

21 A. No.

22 Q. When was the last time you saw this statement?

23 A. It was the day we made the statement.

24 Q. Prior to your deposition today did you review any
25 documents?

1 A. Documents?

2 Q. Yes.

3 A. I went over some. I think I went over my
4 statement with my attorney right here.

5 Q. And by statement, you mean Exhibit 16?

6 A. Not -- maybe the exhibit, I don't know. We went
7 over my statement. I don't know if this was the
8 exact statement.

9 Q. Is there a written statement that you're
10 referring to, other than what I see as Exhibit
11 16?

12 A. I don't know. I didn't look at the statement we
13 were going over.

14 Q. I don't really want to know what you said to your
15 attorney and what he said to you, but I do want
16 to know if there's a document out there that has
17 your statement, other than what we've seen so far
18 today.

19 A. I don't think there's another statement out
20 there. I haven't made any other statements.

21 Q. There is no other document summarizing your
22 statement?

23 A. Besides the synopsis and this, I haven't seen
24 anything else.

25 Q. When you volunteered to be tased back when you

1 were in class, did you sign a release?

2 A. I don't remember signing a release.

3 Q. Did you sign any document waiving a right to sue
4 anybody if you were injured by being tased?

5 A. I don't remember signing a statement like that.

6 Q. Is there a particular person in the Cleveland
7 Police Department who is the taser trainer?

8 MR. KAISER: Time

frame, please.

10 MR. GERHARDSTEIN: Back in
11 2008 to 2010.

12 A. There's two officers that train us in the taser.
13 I can't think of their names off the top of my
14 head, though. If I have to see them I could tell
15 you, yeah, those are the guys.

16 Q. Is Seroka one of them?

17 A. I don't remember Seroka.

18 One of them is Officer Bachman.

19 Q. B-A-C-H-M-A-N?

20 A. I think it's -- I guess that would be the
21 spelling. I don't know how to spell it, but the
22 other guy, I can't remember his name.

23 Q. Have you been disciplined, at all, while you've
24 worked for the Cleveland Police Department?

25 MR. KAISER: Objection.

1 A. Yes.

2 Q. Tell me about that.

3 MR. KAISER: Same
4 objection.

5 Go ahead.

6 A. I worked part time without filling out the proper
7 paperwork, completing the proper paperwork.

8 Q. You have to apply to be approved for secondary
9 employment?

10 A. Yes.

11 Q. If you don't apply, that's a violation of the
12 rules?

13 A. Yes.

14 Q. And when was that discipline?

15 A. The exact date I can't -- I don't remember.

16 Q. What year?

17 A. I don't remember the year.

18 Q. Was it before your use of force with Mr. Brown?

19 A. Yes, I think so. I'm pretty sure it was.

20 Q. And what was the -- were you suspended or what
21 was the discipline?

22 A. No, I think it was just a warning.

23 Q. Any other discipline?

24 A. No.

25 Q. In your experience in the Cleveland Police

1 Department, have you ever witnessed a suspect
2 incur injury as a result of the deployment of a
3 taser?

4 A. No, I never witnessed it.

5 Q. In your experience in the Cleveland Police
6 Department, have you ever had specific
7 discussions with your supervisor or trainers
8 about the affects of a taser on breathing and/or
9 cardiac function?

10 A. During training.

11 Q. And to the best of your recollection, tell me
12 what you learned in training about the affects of
13 a taser on breathing.

14 MR. KAISER: Objection.

15 A. I really can't recall the exact training, you
16 know, what came out of it.

17 Q. And to the best of your recollection, tell me
18 what you have learned about the affects of taser
19 on cardiac function in your training at the
20 Cleveland Police Department?

21 MR. KAISER: Objection.

22 Calls for hearsay.

23 A. I can't recall.

24 Q. In your experience and training as a Cleveland
25 Police Officer, have you ever been warned about

the affects of multiple deployments of the taser
on a single subject?

3 A. Not that I can recall.

4 Q. So in your experience have you ever been warned
5 that tasing a person four times may put the
6 person at more risk than tasing them once?

7 A. I can't recall.

8 MR. KAISER: Objection.

9 BY MR. GERHARDSTEIN:

10 Q. As we sit here today, do you have an opinion as a
11 police officer certified to use a taser as to
12 whether tasing a person four times puts them at
13 greater risk for their health than tasing them
14 once?

15 MR. KAISER: Objection.

16 Foundation.

17 A. I don't have an opinion.

18 Q. So is it that you just do

19 person four times puts them at greater risk than
20 once?

23 A. No, I don't know.

24 Q. You mentioned that during the wrestling match
25 with Mr. Brown there came a time when he had a

1 dark object?

2 A. Yes.

3 Q. And you actually stood up and pulled your Glock?

4 A. I didn't stand up.

5 Q. Or so you were still on the ground?

6 A. Yes.

7 Q. And you unholstered your Glock?

8 A. Yes.

9 Q. And did you say out loud to Mr. Brown that you
10 were going to shoot him?

11 A. I yelled, Belal, I'm going to shoot him, but I
12 yelled so both of them could hear it.

13 Q. And was it your intent to discharge your firearm
14 at that point?

15 A. Yes.

16 Q. And why was that?

17 A. Well, at this point of the fight I didn't feel
18 that we were winning and I was extremely
19 exhausted and I felt that he was just getting
20 stronger and stronger. It was harder and harder
21 to keep him down. And he produced an object, a
22 black object, I had absolutely no idea what it
23 was. I didn't know if it was a gun, if it was a
24 knife, but I was like, we're losing this fight
25 and he's producing weapons, what I thought was a

1 weapon. So that's where I felt like this is now
2 -- we're coming to the end of this and I don't
3 want be at the losing end.

4 Q. At the time you made that announcement and
5 unholstered your Glock, where were the three of
6 you in relation to each other, and explain to me
7 where this object was?

8 A. Well, we were all on the ground. Everybody was
9 still on the ground.

10 Q. All right.

11 A. You know, we were still holding each other. I
12 mean, I can't tell you exactly what part was
13 holding who. And I said during the fight, yeah,
14 you know, he produced a black object in his hand.

15 Q. Did you see it?

16 A. Yeah, I saw it. That's what caused me to, you
17 know, like I don't know what that is. I didn't
18 know if that was a knife or a gun. I didn't know
19 what it was.

20 Q. Where did it come from?

21 A. Where did it come from?

22 Q. Yes.

23 A. I don't know where it came from.

24 Q. And did Mr. Brown use that object against you, in
25 any way?

1 A. Not against me.

2 Q. Did you see him use it against anyone else?

3 A. I didn't see him use it.

4 Q. And then after you said -- I'm sorry, what was it
5 you said?

6 A. Belal, I'm going to shoot him.

7 Q. After you said, Belal, I'm going to shoot him,
8 what happened with respect to this object?

9 A. My partner grabbed his wrist and wrestled it out
10 of his hand and threw it and he yells, don't
11 shoot him, and I reholstered it. I reholstered
12 my weapon.

13 Q. How far away from you, at that point, was this
14 black object?

15 A. After my partner threw it?

16 Q. Yes.

17 A. I don't know how far it was.

18 Q. Were you satisfied that it was out of your reach
19 at that point?

20 A. Yeah, as long as my partner threw it, I was
21 comfortable with it, no matter where it landed.

22 Q. So at that point were you satisfied that Mr.
23 Brown no longer had a weapon?

24 A. Yeah, at that point.

25 Q. Then you reholstered your Glock and as of that

1 moment was it still just you and your partner or
2 were there other officers?

3 A. It was still me and my partner.

4 Q. How long after that did the other officers
5 arrive?

6 A. I couldn't tell you. I mean, like I say -- I
7 don't know, it seemed like a long time for me and
8 my partner, we were fighting.

9 Q. When the other officers arrived, you then
10 disengaged?

11 A. Yes.

12 Q. Did you advise any of them that he was no longer
13 armed or he was armed one way or the other?

14 A. No.

15 Q. Prior to the discharge of your taser with respect
16 to Mr. Brown, were you aware of any reports from
17 Amnesty International of the taser causing
18 hundreds of deaths?

19 MR. KAISER: Objection.

20 A. No, I wasn't aware of that.

21 Q. Have you followed any of the national news about
22 the controversy surrounding the use of tasers?

23 A. I haven't followed any of it.

24 Q. Are you aware that the United Nations has
25 declared that tasers can be instruments of

1 torture when misused?

2 MR. KAISER: Objection.

3 A. No, I wasn't aware of that.

4 Q. Do you subscribe to any law enforcement
5 publications?

6 A. Yes.

7 Q. What law enforcement publications do you
8 subscribe to?

9 A. It's a website. I think it's called Officer 1.

10 Q. Is it Force 1?

11 A. I haven't looked at the website in a while. It
12 may be Force 1.

13 MR. MALIK: Police 1.

14 BY MR. GERHARDSTEIN:

15 Q. Or Police 1?

16 A. It may be Police 1.

17 Q. Tell me about that website.

18 A. Like I said, I haven't looked at it in a long
19 time. It has a lot of police-related things.
20 Could be new training, police incidents, police
21 videos, new police cars coming out.

22 Q. How often in 2010 were you looking at that
23 website?

24 A. I didn't look at that website in 2010.

25 Q. Oh, you started looking at it since then?

1 A. I remember looking at it last year is when I
2 first became aware of it.

3 Q. In 2010 did you subscribe to any law
4 enforcement-related publications?

5 A. I can't -- I don't -- I can't recall.

6 Q. During the entire incident, did Mr. Brown say
7 anything to you after he said, do you know who I
8 am?

9 A. No.

10 Q. So even though you were trying to get him to
11 follow your directions at the back of the car and
12 then by the side of the car and then during the
13 chase, he didn't say anything to you?

14 A. I mean, during the fight I think he was saying
15 something during the fight, but I can't recall
16 what he was saying.

17 THE VIDEOGRAPHER: Excuse me,
18 off the record.

19 (Thereupon, there was a brief recess.)

20 THE VIDEOGRAPHER: On the
21 record.

22 BY MR. GERHARDSTEIN:

23 Q. To your knowledge, with respect to the radio
24 equipment you had on December 31st, 2010, was
25 there a way to just push the mic down and then

1 leave it in that state permanently?

2 A. No.

3 Q. During your altercation with Mr. Brown, did you
4 press the mic from time to time?

5 A. Yes.

6 Q. Do you know how many times?

7 A. I don't know how many times.

8 Q. Do you know what your goal was in pressing the
9 mic?

10 A. Yes.

11 Q. And what was it?

12 A. To locate -- to give everybody our location, let
13 everybody know what was happening, to call for
14 backup. You know, let everybody aware of what's
15 going on.

16 Q. Did you witness your partner also using his
17 radio?

18 A. I don't remember.

19 Q. The black object that was thrown, did you ever
20 look at it after the incident?

21 A. I can't recall.

22 Q. Did you ever see what it was during the
23 investigation, at anytime?

24 A. No. Once homicide takes the scene, I didn't get
25 involved in any of it.

1 Q. So as we sit here today, do you know what it was?

2 A. I was told it was a knife.

3 Q. Who told you that?

4 A. I can't remember which officer told me that.

5 Q. Did you ever see the knife?

6 A. No.

7 Q. With respect to --

8 MR. KAISER:

He saw the

9 black object.

10 BY MR. GERHARDSTEIN:

11 Q. On the night you saw a black object, but you
12 never afterwards looked at it and determined that
13 it was a knife?

14 A. No, I never saw it with my own eyes.

15 Q. And he held it in which arm?

16 A. I can't recall which arm it was in right now.
17 Like I said we were all fighting, I can't
18 remember which one it was in.

19 Q. And how big was it?

20 A. I can't remember how big it was.

21 Q. What shape was it?

22 A. It was dark. I don't remember what shape it was
23 in.

24 Q. Going back to your first encounter with Mr. Brown
25 with the headlights that you say were off, as he

1 got out of the car did you instruct him to turn
2 the car off?

3 A. No, I didn't.

4 Q. Was the car still running?

5 A. I believe so. I can't remember, though. I
6 didn't tell him to turn it off.

7 Q. So your only instruction was to put it in park
8 and he did comply with that?

9 A. Yes.

10 Q. And it may well be that the engine was still
11 running?

12 A. It could be. It's possible.

13 Q. In your training with the Cleveland Police
14 Department, you have received some medical
15 training; right?

16 A. Some.

17 Q. You have some kind of certificate for heart, what
18 is that?

19 A. I don't remember having a certificate for heart.
20 Maybe CPR.

21 Q. Yeah, did you get trained in CPR?

22 A. Some years ago.

23 Q. How many years ago?

24 A. I think possibly two or three.

25 Q. And is that something you maintain, your CPRs

1 training?

2 A. No. When they give it to us, that's what we
3 receive our CPR training.

4 Q. Have you received any other medical training?

5 A. No.

6 Q. At anytime while you were on the scene and before
7 EMS arrived, did you observe anyone take Mr.
8 Brown's vitals?

9 A. No.

10 Q. At anytime while you were on the scene and before
11 EMS arrived, did you hear anyone say whether or
12 not Mr. Brown was experiencing any medical
13 distress?

14 A. No.

15 Q. Are you married?

16 A. Yes.

17 Q. Do you have any kids?

18 A. Yes.

19 Q. Have you filed bankruptcy?

20 A. No.

21 Q. When you identify yourself in electronic
22 communications, like a LEADS check, what number
23 do you put in?

24 A. I'm not -- I'm not sure. What do you mean?

25 Q. You have a badge number; right?

1 A. Yes.

2 Q. It's 170, I think?

3 A. 175.

4 Q. 175. Are there any other numbers that you use as
5 a self identifier in your work in the Cleveland
6 Police Department?

7 A. The car number I'm using, maybe.

8 Q. That car number changes with whatever beat you're
9 on; right?

10 A. Yes -- depend -- yes, or what --

11 Q. Does the car number change?

12 A. Yes, the car number does change. You may not
13 work the same geographical location. You may be
14 in another unit.

15 Q. Does the car stay with the beat?

16 A. The car normally stays with the beat.

17 Q. So the only personal number you have is 175?

18 A. Yes.

19 Q. And do you put that on all of your correspondence
20 and all of your electronic communications?

21 A. What do you mean, like when I talk to radio?

22 Q. Yeah, when you talk to radio or when you use the
23 CAD?

24 A. No, the only time I use my badge number is when
25 I'm doing a tow.

1 Q. You have a CAD system in the car?

2 A. Yes.

3 Q. And that's a computerized terminal that allows
4 you to type requests for information to check
5 LEADS; right?

6 A. Yes.

7 Q. Have you seen a printout from CAD communications
8 from December 31st, 2010?

9 A. No.

10 Q. Did you use the CAD that night?

11 A. I can't remember. My partner and I probably did.
12 I don't know who logged on, whether it was me or
13 my partner that night.

14 Q. Well, if you were the driver would you have
15 logged on?

16 A. It didn't matter. We were partners and it didn't
17 matter who logged on.

18 MR. GERHARDSTEIN: All right.

19 Well, I have asked your attorney to
20 see if you can go to your locker and find
21 your taser materials. We're probably
22 going to want some cooperation on getting
23 your cell phone record from that day.

24 And other than that, I think we're
25 done. So thank you for your cooperation.

1 THE WITNESS: You're
2 welcome, sir.
3 THE VIDEOGRAPHER: End of
4 record.
5 MR. GERHARDSTEIN: Hold you,
6 are you going to give him instructions?
7 THE VIDEOGRAPHER: Mr.
8 Chapman has the right to review a
9 transcript when it's typed or he can waive
0 that right, Counsel. Also, he can watch
1 the videotape if he'd like.
2 MR. KAISER: He'll
3 review them both.
4 THE VIDEOGRAPHER: Thank you.
5 - - -
6 (DEPOSITION CONCLUDED.)
7 - - -
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1
2 OFFICER MICHAEL CHAPMAN (Date)
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1 I have read the foregoing transcript from Page 1
2 through 137 and note the following corrections:
3

PAGE	LINE	REQUESTED CHANGE
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20 Officer Michael Chapman

21 Subscribed and sworn to before me this ____ day
22 of _____, 2012.

23 Notary Public

24

25 My commission expires: _____.

1 C E R T I F I C A T E
23 STATE OF OHIO,)
4) SS:
5 COUNTY OF CUYAHOGA.)
6
7I, Lori A. Morris, a Notary Public within and for
the State of Ohio, authorized to administer oaths and
to take and certify depositions, do hereby certify that
the within-named witness, OFFICER MICHAEL CHAPMAN, was
by me, before the giving of his/her deposition, first
duly sworn to testify the truth, the whole truth and
nothing but the truth, that the deposition as above-set
forth was reduced to writing by me by means of
stenotypy, and was later transcribed into typewriting
under my direction; that this is a true record of the
testimony given by the witness; that said deposition
was taken at the aforementioned time, date and place,
pursuant to notice or stipulations of counsel, that I
am not a relative or employee or attorney of any of the
parties, or a relative or employee of such attorney or
financially interested in this action. I am not, nor
is the court reporting firm with which I am affiliated,
under a contract as defined in Civil Rule 28(D).IN WITNESS WHEREOF, I have hereunto set my hand
and seal of office, at Cleveland, Ohio, this 26th day
of June, 2012.

Lori A. Morris, Notary Public, State of Ohio.
1360 West Ninth Street, Cleveland, Ohio 44113
My Commission expires April 21, 2017.